BEFORE THE STATE OF WASHINGTON

ENERGY FACILITY SITE EVALUATION COUNCIL

In the Matter of: APPLICATION NO. 2003-01 SAGEBRUSH POWER PARTNERS, LLC KITTITAS VALLEY WIND POWER PROJECT	**COUNCIL ORDER No.** **Applicant's Proposed Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition**

Executive Summary: The Energy Facility Site Evaluation Council (EFSEC or Council) is the state agency charged with making a recommendation to the Governor as to whether a new major energy facility should be sited in the state of Washington. Chapter 80.50 Revised Code of Washington (RCW). The Council is aware of the region's need for energy and electrical generation capacity. The Council is also mindful of its duty to protect the environment and the public interest.

This matter involves an Application for certification of a proposed rural site in Kittitas County, on open ridge tops between Ellensburg and Cle Elum, located approximately 12 miles northwest of the city of Ellensburg. It is for the construction and operation of the Kittitas Valley Wind Power Project (Project or KVWPP), a wind-powered energy production facility consisting of

a series of turbines as well as associated electric collection lines and other supporting infrastructure. Approximately 6,000 acres of land is associated with the Project. Up to 371 acres would be temporarily disturbed by construction activities; 118 acres would be permanently developed for placement of the turbine towers, access roads, substations, underground and overhead collection lines, and an operations and maintenance facility. (Ex. 20 Sup (CT-Sup, page 20) Sagebrush Power Partners, LLC, (Sagebrush or Applicant) seeks a Site Certification Agreement (SCA) to construct and operate up to 65 wind turbines that would generate between approximately 100-180 megawatts (MW) of wind power. (Ex. 20. Sup R (CT-Sup-R), pp 5 and 6)

The Council has reviewed Sagebrush's Application for Site Certification (Application), No. 2003-01; conducted public and adjudicative hearings; and by this Order recommends approval of the Application to the Governor of the state of Washington. The Applicant has entered into an oral stipulation with the Counsel for the Environment on the record during the contested case hearing which, subject to Council approval, provides that the Environmental Monitor for the construction of the Project should be independent and hired directly by the Council and further, that the Environmental Monitor should be a qualified engineering firm (or a person associated with such firm) such as the engineering firm that ultimately became the Environmental Monitor at the Wild Horse Wind Power Project in the spring of 2006. Pursuant to the evidence presented during the hearing, the Applicant will provide mitigation measures such that the planned Project is expected to produce minimal adverse impacts on the environment, the ecology of the land and its wildlife, and the ecology of the state waters and their aquatic life. The Project provides numerous benefits to the County, Region and Nation, including providing clean renewable energy, which will reduce the demand on fossil fuels. The Project will generate additional tax revenues for state and local school districts, fire, hospital and road districts and the county general fund.

Upon careful consideration of the state's need for energy at a reasonable cost and the need to minimize environmental impacts, the Council determined that this facility, with the proposed mitigation, will provide the region with significant energy benefits while not resulting in unmitigated, significant adverse environmental impacts. Thus, ***the proposed Project with its mitigation measures as set forth in this document and in the Final Environmental Impact Statement meets the requirements of applicable law and comports with the policy and intent of Chapter 80.50 RCW.***

The Council recommends that the Governor APPROVE the siting of this Project, as described in this Order and the accompanying draft Site Certification Agreement.

MEMORANDUM

1. INTRODUCTION

The Applicant and the Project

1. The Applicant for the Kittitas Valley Wind Power Project (Project or KVWPP) is Sagebrush Power Partners, LLC (Sagebrush or Applicant), a wholly owned subsidiary of Horizon Wind Energy. Sagebrush Power Partners, LLC, was created as a Delaware Limited Liability Company for the sole purpose of developing, permitting, financing, constructing, owning and operating the Kittitas Valle Wind Power Project.

2. The Applicant is proposing to build the Kittitas Valley Wind Power Project, a renewable energy generation facility pursuant to the Lower End Scenario and within turbine corridors described in the ASC and further limiting itself to a maximum of 65 wind turbines. The Project will have a corresponding nameplate capacity depending on the type of turbine installed. The Project would be constructed at a site in rural Kittitas County, on open ridge tops between Ellensburg and Cle Elum, located approximately 12 miles northwest of the city of Ellensburg, for the construction and operation of the Kittitas Valley Wind Power Project (Project or KVWPP), a wind-powered energy production facility consisting of a series of turbines as well as associated electric collection lines and other supporting infrastructure. Elements of the Project would be constructed consecutively, to include roads, foundations, underground and overhead electrical system collection lines, grid interconnection substation, step-up substation(s), feeder line(s) running from the on-site step-up substation(s) to the interconnection substation, meteorological stations, an operations and maintenance (O&M) facility, an informational kiosk, and associated supporting infrastructure. Approximately 6,000 acres of land is associated with the Project. Up to 371 acres would be temporarily disturbed by construction activities and 118 acres would be

permanently developed for placement of the turbine towers, access roads, substations, underground and overhead collection lines, and an operations and maintenance facility. (Ex. 20 Sup (CT Sup) p. 20). Sagebrush Power Partners, LLC, (Sagebrush or Applicant) seeks a Site Certification Agreement (SCA) to construct and operate up to 65 wind turbines with corresponding nameplate capacity depending on the type of turbine installed. (Ex. 20 Sup-R (CT Sup-R) pp 5 and 6).

3. The Project area is currently zoned as Forest and Range and Agricultural-20. (ASC, Sec. 2.1) The majority of the KVWPP site and proposed interconnect points lie on privately owned land. Parts of the Project site lie on land for which the Applicant has secured a long term-lease with the Washington Department of Natural Resources (DNR). The Applicant has obtained wind option agreements with landowners for all private lands within the Project site boundary and electrical collection feeder line corridors. (ASC, Sec.2.2).

4. The Project would utilize a series of 3-bladed wind turbines on tubular steel towers to generate electricity. The Project contemplates turbines, each with a rotor diameter of between approximately 80 meters and 90 meters up to a maximum of 65 units with corresponding nameplate capacity depending on the type of turbine installed (Ex. 20 Sup (CT-Sup) p 18).

5. The Applicant has requested the latitude to select the turbine manufacturer prior to beginning Project construction. The size and type of turbine used for the Project would largely depend on such factors as safety, quality, price, performance and reliability history, power characteristics, guarantees, financial strength of the supplier, and the availability of a particular type of wind turbine at the time of construction. Regardless of which size of turbine is finally selected for the Project, the turbines would generally be installed along the access roadways

identified in the Application. All construction activities would occur within the corridors identified in the Application, with any final adjustments to specific turbine locations made to maintain adequate spacing between turbines for optimized energy efficiency and to compensate for local conditions. (Exhibit 20 Sup (CT-T Sup, p 24).

6. Water required for construction of the Project will be purchased off-site from authorized sources, and transported to the Project area by truck. (ASC Sec. 3.3.6.1) Sanitary waste water produced during construction will be disposed of off-site at facilities authorized to accept such wastes. Water needs during operation will be minimal and primarily for bathroom and kitchen uses at the O&M facility, which are expected to be less than 1,000 gallons per day. Water will be obtained from an exempt well that will be installed by a licensed contractor pursuant to Washington State Department of Ecology requirements. (ASC, Sec. 3.3.6.2). Sanitary waste water produced during Project operation will be discharged and treated in an on-site sanitary septic system constructed in accordance with State of Washington requirements. (ASC Sec. 2.8). The Project will not generate process wastewater during operation. Stormwater discharges generated during construction and operation of the Project would be managed in accordance with Washington State stormwater management practices and guidelines.

7. The Applicant is proposing to mitigate all permanent and temporary impacts on vegetation caused by the proposed Project, in accordance with the guidelines outlined in the WDFW Wind Power Guidelines for siting and mitigating wind power projects east of the Cascades, through the purchase and protection of an approximately 539 acre mitigation parcel lying within the 6,000-acre Project area. The mitigation parcel is located in T19N, R17E, Sections 22 and 27. (ASC Sec. 3.4.7.8).

8. The Project will interconnect with the BPA 278 kV and/or the PSE 230 kV transmission lines near Bettas Road. Since interconnection to the grid will not require the construction of any new major transmission feeder lines, several environmental and other impacts have been avoided. (ASC Sec. 2.4.2).

The Council and the EFSEC Review Process

9. EFSEC was created to advise the Governor in deciding which proposed locations are appropriate for the siting of new large energy facilities. Chapter 80.50 RCW. The Legislature recognized that the selection of sites would have a significant impact on the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure, through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. RCW 80.50.010.

10. The Council has a comprehensive mandate to balance the need for abundant energy at a reasonable cost with the broad interests of the public. The Council is also charged to protect the health of citizens and recommend site approval for power plants where minimal adverse effects on the environment can be achieved. RCW 80.50.010; *see also* Washington Administrative Code (WAC) 463-47-110.

11. The Council conducted its review of this Application as an adjudicative proceeding pursuant to Chapter 34.05 RCW, as required by RCW 80.50.090(3) and Chapter 463-30 WAC.

12. Pursuant to its statutory obligations, the Council reviewed Application for Site Certification No. 2003-01, conducted hearings to determine if the proposed Project complies with local land use regulations, issued a Draft Environmental Impact Statement (Draft EIS), issued a Supplemental Draft EIS, issued an Addendum to the DEIS, adopted and issued a Final Environmental Impact Statement (Final EIS), and conducted formal adjudicative and public comment hearings.

13. Council representatives participating in these proceedings to consider the Application are: James O. Luce, Council Chair; Richard Fryhling, Department of Community, Trade and Economic Development; Hedia Adelsman, Department of Ecology; Chris Towne, Department of Fish and Wildlife; Judy Wilson, Department of Natural Resources; Tim Sweeney, Washington Utilities and Transportation Commission; and Patti Johnson, Kittitas County. Adam E. Torem, Administrative Law Judge, Office of Administrative Hearings, was retained by the Council to facilitate and conduct the hearings.

Compliance with the State Environmental Policy Act

14. The Council is also charged with the responsibility to apply the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, which provides for the consideration of probable adverse environmental impacts and possible mitigation. WAC 463-47-140. Pursuant to SEPA, EFSEC is the lead agency for environmental review of projects under the jurisdiction of Chapter 80.50 RCW; the Council Manager is the SEPA responsible official. WAC 463-47-051.

15. In this proceeding, the Council complied with SEPA requirements by issuing a Determination of Significance and Scoping Notice, conducting a scoping hearing, issuing a Draft

EIS for public comment, conducting a public hearing and accepting written comments on the Draft EIS, issuing a Supplemental Draft EIS and conducting a public hearing and accepting written comments, issuing an Addendum to the Draft DEIS and adopting and issuing a Final EIS.

16. On February 14, 2003, the Council issued a Determination of Significance and request for comments on the scope of the EIS. The Council held a meeting with interested federal and state agencies as well as a separate public comment meeting on the scope of the EIS in Ellensburg, Washington, on March 12, 2003. Nine people from nine agencies attended the agency meeting and approximately 150 people attended the public scoping meeting. The Council accepted written comments on the scope of the EIS until March 14, 2003. In April 2003, the Council issued the Scoping Summary report.

17. On December 12, 2003, the Council issued a Draft EIS prepared by an independent consultant under contract to EFSEC. The Council held a public hearing to accept oral comment on the Draft EIS on January 13, 2004, in Ellensburg, Washington. The Council heard oral comments from _____ members of the public. The Council accepted written comments through January 24, 2004 (postmark deadline); the Council received _____ written comment letters. The Council issued a Draft Supplemental DEIS on August 11, 2004. The Council held a public hearing on the Supplemental DEIS on August 25, 2005 and heard oral comments from _____ members of the public. The Council accepted written comments through September 11, 2004 and received _____ _____ written comments. On January 20, 2003 the Council reopened for comments on the Supplemental DEIS and held a public hearing to receive additional comments on February 2, 2006, receiving _____ oral comments. It allowed written comments on the reopened comment period until February 1, 2006, receiving ____ written comments. As a result of the reduction of scope of

the project the Council issued an Addendum to the DEIS on December 23, 2005 A Final EIS was adopted and issued by the Council on_____, 2006.

Adjudicative Proceeding

18. On May 16, 2003, the Council issued its Notice of Intent to Hold Adjudicative Proceeding, Notice of Opportunity and Deadline to File Petitions for Intervention by June 26, 2003, and Notice of Intent to Hold Prehearing Conference.

19. Statutory parties to the EFSEC adjudicative hearings include the Applicant and the Counsel for the Environment. The Washington State Department of Community, Trade and Economic Development (CTED) filed a Notice of Intervention in the matter; CTED is entitled to intervene under Council rules, therefore, the Council granted party status. WAC 463-30-050. Upon petitions being filed, the Council also granted party status to the Economic Development Group of Kittitas County (EDG), Renewable Northwest Project, Sierra Club (Cascade Chapter), Residents Opposed to Kittitas Turbines and Mr. F. Steven Lathrop. Chris Hall was also accorded intervener status but later withdrew as an intervener, pursuant to a letter dated May 25, 2006.

The parties were represented in the various hearings as follows:

Applicant, Sagebrush Power Partners, LLC: Darrel L. Peeples, Attorney at Law, Olympia, WA; Timothy L. McMahan, Attorney at Law, Stoel Rives, LLP, Vancouver, Washington; and Erin L. Anderson, Attorney at Law, Cone Gilreath Law Offices, Ellensburg, Washington.

Counsel for the Environment: Michael Tribble, Assistant Attorney General, Office of the Attorney General, Olympia, Washington.

Kittitas County: James Hurson, Deputy Prosecuting Attorney, Kittitas County Prosecuting Attorney's Office, Ellensburg, Washington.

F. Steven Lathrop: Jeff Slothower, Attorney at Law, Ellensburg, Washington.

Washington State Department of Community, Trade and Economic Development: Tony Usibelli, Assistant Director, Energy Policy Division, Olympia, Washington.

Economic Development Group of Kittitas County: Debbie Strand, Executive Director, Ellensburg, Washington.

Renewable Northwest Project: Susan Elizabeth Drummond, Foster Pepper & Shefelman P.L.L.C Seattle, Washington.

Sierra Club, Cascade Chapter: Louise Stonington, Seattle, Washington.

Residents Opposed to Kittitas Turbines: James C. Carmody, Yakima, Washington

Chris Hall: Chris Hall

20. Prior to formal adjudicative hearings on the Application, the Council duly noticed, and conducted prehearing conferences on June 26, 2003, January 13, 2004, February 19, 2004, July 19, 2004, August 2, 2004, August 10, 2004, September 22, 2004, August 22, 2005, March 3, 2006, April 24, 2006, May 30, 2006, June 13, 2006, July 12, 2006, and August 17, 2006. The Council issued Prehearing Orders Numbers 1 through 26.

21. The Council held a formal Adjudicative Proceeding regarding Sagebrush's Application, No. 2003-01, on September 18 through September 21, 2006, in Ellensburg, Washington. On the evening of September 12, 2006, the Council held a public hearing in Seattle, Washington, at which _____ members of the public testified. The Council held public hearings in Ellensburg, Washington, on September 20 and 21, 2006 at which _____ members of the public testified. The Council received _____ written comment letters regarding the Project.

22. Subsequent to the Adjudicative Proceedings, the parties filed post-hearing briefs. proposed findings of facts, conclusion of law and order together with proposed Site Certification Agreement

conditions.

Land Use Consistency

23. The Council is required to hold a public hearing to determine whether a proposed Project's use of a site is consistent with local or regional land use plans as well as zoning ordinances in effect at the time the Application was submitted to the Council. WAC 463-14-030. A land use consistency hearing was conducted on May 1, 2003, in Ellensburg, Washington. Both the Applicant and Kittitas County testified that the Project was inconsistent with Kittitas County land use plans and zoning ordinances, although the "inconsistency" relates to Kittitas County's Wind Farm Overlay Ordinance, KCC chapter 17.61A rendering all wind farms a prohibited use until the Board of County Commissioners approves a subarea plan amendment to the County's Comprehensive Plan, a rezone, approval of development agreement, and issuance of a wind farm permit. The Project is not considered "inconsistent" with the County's Comprehensive Plan policies or the general statements of intent in the zoning code. Based upon this inconsistency, the Council found the Project to be inconsistent with Kittitas County land use plans and zoning ordinances, and issued Council Order No. 776 to that effect. Pursuant to WAC 463-28-030(1) the Council directed the Applicant to make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project Application.

24 Council Order 776 gave the Applicant 90 days from May 1, 2003, to resolve the inconsistencies, ask for preemption of local land use ordinances, or request an extension of the time period for requesting preemption pursuant to WAC 463-28-040. Recognizing the EFSEC requirement that the Applicant make the necessary application for change in, or permission under,

such land use plans or zoning ordinances, and make all reasonable efforts to resolve noncompliance, the Applicant filed its first County application pursuant to KCC 17.61A on March 27, 2003. The Applicant then commenced protracted efforts to seek County land use consistency. At the May 12, 2003 EFSEC meeting, the Applicant requested and received an extension of the time for filing a preemption request until September 1, 2003. Later EFSEC extended the time to January 15, 2004 and subsequently to February 12, 2004. The record before EFSEC shows that the County refused to provide a timeline to process the application, and determined that as part of the County process, the County would itself make a determination of the adequacy of EFSEC's EIS prior to considering the local permit application. The Applicant filed a request for preemption with EFSEC pursuant to WAC 463-28-040 on February 9, 2004 and, withdrew the first County application.

25. In September 2004 the Applicant and Kittitas County requested the Council to continue, indefinitely, the adjudicative hearing which had been set to commence on September 27, 2004, to allow a more expedited processing of the Wild Horse Wind Power Project, Application 2004-1. In the summer of 2005 the Applicant decided to revise the project size and configuration of the KV Project and to file a new application with the County, in hope of obtaining land use consistency. The Applicant approached both the County and EFSEC on this matter and it was agreed to suspend the EFSEC process pending the new application with the County. Both the County and EFSEC requested the Applicant to withdraw its request for preemption pending the outcome of the new County application. The Applicant withdrew its request for preemption on October 19, 2005.

26. The Applicant made a second attempt to achieve local land use consistency, and filed a Development Activities Application pursuant to KCC 17.61A with the County on September 30,

2005 and submitted a revised Development Activities Application on County-required application forms on October 14, 2005. The County deemed the application complete on October 17, 2005.

27. Under the County's process, the County purported to hold a single public hearing before both the Planning Commission and the BOCC, commencing on January 10, 2006, and continued in a serial fashion through numerous public meetings, ending on June 6, 2006. The Applicant submitted proposed findings of fact and conclusions of law, demonstrating that the Project was consistent with applicable County comprehensive plan policies, the statements within the applicable zoning codes regarding the uses that are preferred and discouraged within applicable zoning districts, and met criteria for approval under applicable County zoning ordinances. The Applicant presented written and live testimony from expert witnesses regarding visual impacts, shadow flicker effects, property values, health and safety, noise and wildlife impacts. The Applicant submitted a preliminary draft proposed development agreement modeled on the County-approved Wild Horse wind energy facility development agreement, anticipating negotiation and discussion of the development agreement with County staff aimed at refining the agreement during the approval process.

28. Following hearings on January 10, January 11 and January 12, 2006, the Planning Commission held a deliberation on January 30, 2006 and issued a recommendation and findings of fact on February 13, 2006, recommending denial of the application. The BOCC conducted "continued" hearings on March 29 and 30, 2006, with additional deliberations on April 12 and 27. On May 3, 2006, the BOCC issued a verbal decision "preliminarily" denying the application. The denial was fundamentally based on the BOCC's unsubstantiated determination that the project, as proposed, would cause unacceptable visual and shadow flicker impacts on residents residing in the

vicinity of the project. While the BOCC preliminarily denied the project due to the proximity of turbines to non-participating landowners, each County Commissioner offered varying opinions about the needed setbacks, ranging from 2,000 feet to a minimum of one-half mile. The Applicant advised the County that these setbacks would render the project unviable. At this stage, although the BOCC did not take formal action by way of a motion or otherwise to define this essential project development regulation, it clearly indicated it would be adopting, for this project, a minimum turbine setback of 2,500 feet from non-participating landowner's residences. Following the BOCC's preliminary decision to deny the project, the Applicant met with the County staff in an effort to determine whether it was possible to change the project further in order to accommodate the various setback requirements identified in the verbal deliberations by the BOCC. Letters were exchanged between the Applicant and the County regarding these ongoing efforts to satisfy the BOCC's requests.

29. On May 31, 2006, the Kittitas County Board of County Commissioners reviewed draft findings of fact and conclusions of law denying the project. The BOCC formally identified minimum turbine setbacks from existing non-participating residences of 2,500 feet and non-participating owners. On June 6, 2006, by Resolution No. 2006-90 the BOCC denied the project.

30. The Applicant has made all reasonable efforts to resolve "noncompliance" issues with the County as required by WAC 463-28-030. In summary, the Applicant made two efforts to seek local consistency to County ordinances to reflect the project's consistency with local land use policies, and reduced the project in half to minimize impacts, deployed substantial expert witness resources to the County process, and participated in protracted hearings. The Applicant's efforts were made, despite a County process that is uniquely complex and discretionary, which duplicates

the EFSEC role and process, and does not meet EFSEC standards for the expeditious siting of energy facilities.

31. The Applicant filed its Second Request for Preemption on June 20, 2006.

Public Testimony and Comment

32. The Council is required to hold public hearings at which any person may be heard in support of, or in opposition to, an Application. RCW 80.50.090; *see also* WAC 463-14-030. The Council provided an opportunity for public witnesses to testify during the hearing on the Draft EIS, the hearings on land use consistency, and the public hearing on the proposed Project.

33. EFSEC provided public notices of the following events: receipt of the Application; public meetings; land use hearing; intent to hold adjudicative proceedings; notice for filing of petitions for intervention and deadline for filing such petitions; notice of adjudicative hearings; Determination of Significance and request for comments on scope of the Environmental Impact Statement (EIS); Draft EIS comment period, Supplemental DEIS comment period and public comment hearings; notice of availability of a Final EIS; and notice of Special EFSEC Meeting. The Council duly published all required notices of these proceedings.

34. The Council received oral comments during these hearings, as follows:_____ oral comments on the Draft EIS on January 13, 2004, in Ellensburg, _____oral comments on the Supplemental DEIS on August 25, 2005, _____oral comments on the Supplemental DEIS on February 2, 2006; _____ oral comments on the; the land use consistency hearing on May 1, 2003, in Ellensburg, Washington; and _____oral comments at a public hearings on the

proposed Project held September 12, 2006 in Seattle, Washington, and _____ oral comments at public hearings held on September 20 and 21, 2006 in Ellensburg, Washington..

35. The Council received _____ comment letters from members of the public regarding the Application, in addition to _____ letters on the Draft EIS, _____ on the Supplemental DEIS and _____submissions regarding land use consistency.

36. The Council carefully considered both the specific comments of the witnesses and the topics they addressed as indications of matters significant to the public as well as the written comments submitted by the public. The Council expresses its appreciation for these witnesses' testimony and all written comments submitted.

Council Action on Recommendation to Governor

37. In accordance with the requirements of Chapter 34.05 RCW and Chapter 80.50 RCW, on_ _____, at a duly noticed Special Meeting conducted in Ellensburg, Washington, the Council voted to recommend approval of the Project to the Governor of Washington state. The Council memorializes its action in this Order, Council Order No. _____ Findings of Fact, Conclusions of Law, and Order Recommending Approval of Site Certification on Condition.

2. LAND USE CONSISTENCY AND PREEMPTION OF LOCAL LAND USE

Land Use Compliance

1, The Project would be constructed in rural Kittitas County, on open ridge tops between Ellensburg and Cle Elum at a site located approximately 12 miles northwest of the city of Ellensburg. The Project area is currently zoned as Forest and Range and Agricultural-20. Wind

farms can be an allowed use within these rural zones, but only through application of the County's Wind Farm Resource Overlay Zone. The Wind Farm Resource Overlay Zone requires: (1) an amendment to the Comprehensive Plan Land Use map by way of a "subarea plan"; (2) a site-specific rezone; (3) execution of an "agreed" development agreement; and (4) issuance of a "Wind Farm Permit." (KCC Chapter 17.61A). While Chapter 17.61A purports to be a single decision process, as shown in the County's "Findings of Fact and Conclusions of Law" appended to Resolution No. 2006-90, the County also denied the Project for not redundantly satisfying the criteria in KCC Chapter 17.98.020E, applicable to "rezones." (County Finding, No. 38). Although the project has been deemed inconsistent with local land use plans because Kittitas County failed to grant the Applicant an overlay zone approval, the project is not inconsistent with the goals and policies of the County comprehensive plan or the underlying zoning designations.

Consistency with the Comprehensive Plan

2. Although the project has been deemed inconsistent with local land use plans, the Project conforms to all relevant General Planning Goals, Objectives and Policies defined in the Kittitas County Comprehensive Plan. The Applicant's proposed Findings of Fact demonstrating consistency are attached in their entirety to the Applicant's Opening Brief at Appendix A. Specific GPO's particularly relevant to this include but are not limited to the following:

3. *GPO 2.1 The maintenance and enhancement of Kittitas County's natural resource industry base including but not limited to productive timber, agriculture, mineral and energy resources.*

Windpower development such as the Kittitas Valley Wind Power Project is clearly an enhancement of the energy portion of the County's natural resource industry, a status it achieves while also assisting to maintain the agriculture sector in the Project's vicinity which is planned for rural uses, and zoned Agruculture-20 (A-20) and Forest & Range (FR).

4. GPO 2.2 Diversified economic development providing broader employment opportunities.

Wind power in general and the Kittitas Valley Wind Power Project in particular represent economic diversification. Construction of the project is expected to create up to 253 temporary jobs during construction and 12-20 permanent, family wage new jobs (DEIS page 3.7-8). The Project would also lower the effective property tax rates on landowners, a further benefit to the agriculture community. Wind power development of agricultural lands will greatly aid agricultural landowners, helping to sustain long-term agricultural use of the properties, and helping to insulate rural landowners from economic cycles typical in the rural economy.

5. GPO 2.3 The encouragement of urban growth and development to those areas where land capability, public roads and services can support such growth.

The Project area and vicinity are planned and zoned for forest and range and agricultural uses, not residential development. Plan policies and the zoning code specifically prohibit sprawling residential development in this area of the County, confirming that it is the County's GMA-based policy to avoid extension of urban services in the area. The Project will provide economic development without imposing demands on public utilities and services.

6. GPO 2.5 Kittitas County should encourage residential and economic growth that will minimize the costs of providing public utilities and services.

As referenced in the Findings related to GPO 2.3, the Kittitas Valley Wind Power Project will not impose infrastructure costs on the County, while tax benefits will be significant, unlike residential development in the project area that would create substantial infrastructure costs for the County in excess of the tax revenues such residential development would generate.

7. *GPO 2.6 Kittitas County will maintain a flexible balance of land uses.*

With only 0.4% of the County's total acreage affected by the 6,000 acre Project area, and fraction of that (a maximum of 118 acres) occupied by Project improvements, ample opportunity remains for flexibly balancing land use countywide. Moreover, by providing economic incentives for rural landowners within 6,000 acres of the A-20 and FR zones to sustain rural agricultural and natural resource management and development land uses, the Project will help reinforce the County's rural land use policies and help to maintain the Comprehensive Plan's flexible balancing of uses.

8. *GPO 2.7 Kittitas County will cooperate with the private sector and local communities in actively improving conditions for economic growth and development.*

The Project is a rural-friendly, agriculture-friendly private sector development, enabling sustainable agricultural and natural resource management uses in the vicinity. The Project provides a unique opportunity for economic growth and development in a rural area, without compromising the County's GMA-based Comprehensive Plan and zoning code policies and

requirements for the protection and preservation of agricultural and natural resource-based land uses, practices and traditions.

9. GPO 2.11A Much of Kittitas County receives little natural precipitation and is highly susceptible to fire hazard during much of the year. Meanwhile, more people are moving to previously uninhabited forest and rural areas. As this number increases, the need to provide adequate and efficient fire services to these areas also increases.

The Project's design provides many benefits to fire districts concerned about wildland fire management, including development of access roads that serve as fire breaks and provides better access for fire fighting equipment; providing on-site equipment that supplements the fire district's own resources; and controlling site access and reducing the chance of fire. The Applicant has already entered into a fire services agreement with Kittitas County Fire District #1 that will provide fire protection for the life of the Project, including areas which currently have no fire protection whatsoever. In addition, under the terms of the Fire Services Agreement, the Applicant will purchase a new brush rig to allow the fire district to better fight fires in the area.

10. The Project conforms to the following Private Property Planning Goals, Objectives and Policies and others related thereto:

GPO 2.12 Kittitas County will administer this Chapter in accordance with the United States and State of Washington constitutional provisions for the protection of private property rights and provision of due process. As set forth in WAC 365-195-720 [Procedural Criteria], the county in

administering this ordinance, "should refer to all sources at all levels of government, including federal and state constitutions, federal and state statutes, and judicial interpretations thereof."

GPO 2.13 Should any provisions of this ordinance be in violation of constitutional requirements or of recent court decisions, the Planning Director will advise the Board of the provisions in violation, and whether the violation is a requirement of the State of Washington or a regulation or policy of the county. If the violation is a requirement of the state, the Washington State Attorney General's Office will be advised. If the violation is a county requirement, the Board of County Commissioners will schedule a public meeting to consider removing or amending such section or policy.

GPO 2.14 Kittitas County will place a high priority in the Kittitas County Comprehensive Plan the following state goal:
RCW 36.70A.020(6) Property Rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

GPO 8.7 Private owners should not be expected to provide public benefits without just compensation. If the citizens desire open space, or habitat or scenic vistas that would require a sacrifice by the landowner or homeowner, all citizens should be prepared to shoulder their share of the sacrifice.

GPO 8.9 Projects or developments, which result in the significant conservation of rural lands or rural character, will be encouraged.

GPO 8.62 Habitat and scenic areas are public benefits that must be provided and financed by the public at large, not at the expense of individual landowners and homeowners.

These policies require that landowners should not be expected to forgo the opportunity to develop wind generation or other uses on their properties due to potential, subjective visual effects. The Project will be located primarily on private open rangeland to be leased or purchased by the Applicant. Parts of the Project are proposed on land owned by the Washington Department of Natural Resources (DNR). These comprehensive plan policies suggest that landowners should not be expected to forgo the opportunity to develop their properties because of potential subjective visual effects within a limited area of the County. Under this Plan Policy, such preservation of "scenic vistas" would be considered for "public benefit." The applicability of this Policy is particularly pronounced in this area of the County, where the rural landowners have a right to rely on the County's GMA-based planning and zoning, and have a right to expect that the County will enable and encourage ongoing, sustained rural land uses, without infringement by incompatible residential sprawl.

11. The Project is proposed in an area that the County has been zoned and planned for rural land uses. The Applicant is in partnership, through its land agreements, with private and public property owners comprising the underlying landowners. The Project will not negatively affect either property values or land sales adjacent to the site. (Exhibit 36-Sup (PBD-Sup) and Ex.36 SR (PBD-Sup R

12. The County places a high priority on protection of private property rights. This includes the rights of rural landowners to continue agricultural and natural resource management and development of lands planned and zoned for rural land uses. Wind energy development is a key strategy to enable and encourage ongoing rural land uses, and to provide incentives for rural landowners not to convert their lands to sprawling residential uses. Property rights considerations are a strong argument for approving this Project. The Project's landowners – including long-time residents interested in continuing family ranching and other agricultural and natural resource management and development uses – have partnered with the proposed Project to enable sustainable rural land uses in a large rural area of Kittitas County.

13.. *GPO 8.11 Existing and traditional uses should be protected and supported while allowing as much as possible for diversity, progress, experimentation, development, and choice in keeping with the retention of Rural Lands.*

The Project is compatible with traditional rural land uses and is an alternative to the development of residential subdivisions or other uses which do not preserve open space or encourage rural land conservation. The Project will provide significant economic incentives for ongoing rural/agricultural land uses. Through economic incentives to participating landowners, the KV Project will effectively preserve a 6,000 acre area for rural uses and rural character, fulfilling the promise of this Plan Policy. Traditionally, the Project area and surrounding lands have been used for cattle grazing, recreation, hunting, and natural resource development, extraction and production, all of which are compatible with the Project. Generation of electricity using wind power is a relatively new, rural land use which generates revenues to landowners and the public through taxes and royalty payments to state agencies (WDNR). In an area such as the Project site,

this use is compatible with the traditional land uses, enabling the lands to retain their rural character, as opposed to residential development. The development of the Property fulfills the Plan Goal of *"allowing as much as possible for diversity, progress, experimentation, development, and choice in keeping with the retention of Rural Land."* In the Northwest, wind energy development is a relatively new rural, natural resource-based land use. Throughout the Northwest, wind energy generation has proved itself as a highly successful, progressive means of diversifying and developing rural natural resource industries and economies, fully compatible with ongoing cattle and other agricultural operations. It is a key choice in retaining rural land uses and traditions.

14. *GPO 8.42 The development of resource based industries and processing should be encouraged.*

Wind energy production is a type of resource-based industry in that it uses a natural renewable resource, the wind. As stated above, the proposed Project is consistent with this policy encouraging such industries.

15. *GPO 2.118 Encourage development projects whose outcome will be the significant conservation of farmlands.*

The Project will promote both economic development and agricultural land conservation. It will enable the conservation of a 6,000 acre area of Kittitas County, providing incentives for ongoing, sustainable agricultural and natural resource management uses.

16. *GPO 2.122 Look into additional tax incentives to retain productive agricultural lands.*

Royalty payments from the Project to the landowners are a non-tax incentive to retain productive agriculture use. This Plan policy is met without burden to the taxpayers of Kittitas County – in fact, taxpayers and the County as a whole will significantly benefit from the Project.

17. GPO 2.110 Oppose laws and regulations which restrict agriculture, and support laws and regulations which enhance agriculture.

The Project's royalty and other payments to landowners and the property tax payments to the County and other taxing districts which reduce the tax burden on landowners will greatly enhance the economic viability of ranching and other agriculture operations. The Project area is planned and zoned for agricultural, ranching and natural resource management and development activities. Approval of the Project will reinforce the County's commitment to its GMA-based land use planning goals and policies, will enable landowners within a 6,000-acre rural area to maintain and preserve rural land uses, and will implement policies and regulations intended to protect rural land uses, and to discourage residential sprawl.

18. GPO 2.114 Look at solutions to the problems of needing to sell house lots without selling farm ground.

The Project turns the decision to sell farm ground for housing into a discretionary act on the part of the landowner, rather than an act of economic necessity, because of the combined benefits of Project payments to landowners and the reduced property tax burden. The Project will provide critical support to the agricultural community, reinforcing agricultural and natural resource management land uses and rural traditions.

19. GPO 2.114B Economically productive farming should be promoted and protected. Commercial agricultural lands includes those lands that have the high probability of an adequate and dependable water supply, are economically productive, and meet the definition of "Prime Farmland" as defined under 7 CFR Chapter VI Part 657.5.

The Project would be developed on non-irrigated land, most of which is used for cattle grazing. While this land does not meet the definition of Prime Farmland, its ongoing use for cattle operations will constitute a continuation of a productive agricultural or farming use. Removal of only approximately a maximum of 118 acres of rangeland required for the overall Project footprint would not significantly affect the productivity of cattle grazing operations on this land, and the Project will enable sustained cattle operations within the Project boundaries. Therefore, the Project is consistent with this land use policy.

Consistency with Zoning

20. The underlying zoning designations are explicitly intended to protect the rights of landowners engaged in agriculture and natural resource development and production activities, and to prohibit the encroachment of nonagricultural land uses such as sprawling residential uses that impair farming, ranching and other natural resource management, development and production uses.

21. The Project is consistent with the controlling purpose and intent of the underlying zoning districts:

Chapter: 17.29

A-20 - AGRICULTURAL ZONE

17.29.010 Purpose and intent.

The agricultural (A-20) zone is an area wherein farming, ranching and rural life styles are dominant characteristics. ***The intent of this zoning classification is to preserve fertile farmland from encroachment by nonagricultural land uses; and protect the rights and traditions of those engaged in agriculture.*** (Ord. 83-Z-2 (part), 1983: Res. 83-10, 1983). [Emphasis added].

Chapter 17.56

FOREST AND RANGE ZONE

17.56.010 Purpose and intent.

The purpose and intent of this zone is to provide for areas of Kittitas County wherein ***natural resource management is the highest priority and where the subdivision and development of lands for uses and activities incompatible with resource management are discouraged.*** (Ord. 92-6 (part), 1992). [Emphasis added].

22. The County's Growth Management Act (GMA) planning effort and policies define the entire Project area and most surrounding areas as protected for agricultural and natural resource management, development, extraction and production activities. County GMA-based policy, as defined by County plans and zoning code, is to prohibit sprawling suburban housing developments and to encourage rural activities within the vicinity of the KVWPP site. The minimum lot sizes in both the A-20 and FR zones are 20 acres. Land uses that are incompatible with agricultural uses, including cattle operations, natural resource management, development and production, by definition, do not comply with the County's plan and zoning, nor do they comply with the mandates of the GMA.

23. A key legal and policy requirement in the County's rural zones and associated Comprehensive Plan policies is the protection of the rights and traditions of those engaged in agricultural uses and practices. In developing this Project, the Applicant has partnered with agricultural and forest and range landowners in pursuit of their rights to use their lands in accordance with this vision and policy. The Code explicitly protects these landowners against infringement of these rights by incompatible sprawling residential development. While the preservation of the rights of agricultural landowners is paramount, in order to achieve compatibility with scattered low-density residential development in the vicinity and to better satisfy "compatibility" criteria addressed below, the Applicant has significantly down-sized and modified the Project design and layout to further minimize and mitigate potential impacts below those identified in the DEIS. This includes reducing the number of wind turbine generators from 150 to a maximum of 65, increasing turbine setbacks to address visual concerns, eliminating turbines in the areas with greatest potential for visual impacts, eliminating any significant "shadow flicker" impacts, further reducing noise impacts, and significantly reducing the number of required FAA nighttime safety lights and elimination of daytime FAA lights.

24. Coupled with the rural, agricultural and natural resource management zoning designations, the intent of the Kittitas County Code's wind farm provisions is to provide for the recognition and designation of properties located in rural areas that are, as a matter of County legislative policy and enactment, suitable for wind energy production, while protecting the health, welfare, safety and quality of life of the general public and ensure that the Project is compatible with land uses in the vicinity. As a matter of policy, the County has determined that the A-20 and FR zones are generally suitable for wind energy facilities.

25. Kittitas County's "overlay" zone is legally akin to approval of a planned unit development within a zoning district where planned unit developments are allowed. The criteria are typically those relevant to the particular overlay, *not* traditional rezone criteria. This is particularly true in situations such as here, where the use does not harm or impair underlying permitted rural land uses. Wind farms provide important economic incentives and supplemental income sources to facilitate and enable ongoing agricultural and natural resource management uses within agricultural and forest and range zones.

26. As provided in KCC 17.61A.040, this County's approvals shall only be made if the BOCC determines that:

1. The proposal is essential or desirable to the public convenience;
2. The proposal is not detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood; and
3. The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive cost for facilities and service.

27. The Applicant does not propose to change the underlying land uses allowed within the applicable zoning districts, and in fact, the Project will facilitate the continuation of sustainable agricultural and natural resource management practices and traditions. Fundamentally, properties are suitable for wind farm development (and consequently are generally suitable for the subarea

plan and zoning overlay designations) if they are situated within the appropriate underlying zoning district (A-20, Forest &Range, Commercial Agriculture, and Commercial Forest).

28. The Project will not be materially detrimental to the use of properties in the immediate vicinity of the Project area because all existing land uses within the Project Area - including grazing, natural resource management and development, open space, and rural residential - would continue, with no limitations or restrictions on the use of properties in the immediate vicinity as a consequence of the proposed Project.

29. Notwithstanding the findings in Resolution 2006- 90 the record, including the deliberation by the BOCC, establishes that the BOCC concluded the Project complies with the Wind Farm Resource Overlay ordinance, KCC Ch. 17.61A in all aspects, except for visual and shadow flicker effects to existing residences within 2,500 feet of turbines. The Board's conclusions on project compliance with the DEIS impacts and Development Agreement mitigation measures are discussed during the April 12, 2006 Public Hearing (April 12 transcripts pages 19 -29). (*See* also Testimony of Roger Wagoner, (Ex. 41 R SUP (RW-R SUP)).

30. The Applicant has stipulated that it is able to mitigate shadow flicker by programming individual turbines to shutdown during those specific times that significant shadow flicker occurs. It further stipulated that it would institute this mitigation to all existing residences on non-participating landowners' property within 2,500 feet of a turbine which have a line of sight view (view of turbine not blocked by topography and/or vegetation) from the residence to that turbine, upon request of the non-participating landowner.

31. At the County hearings the Applicant offered a 1,320 foot setback from existing residences of non-participating landowners. The County ultimately denied siting of the Project, demanding a 2,500 foot setback to avoid a perceived visual (looming) effect, without providing any objective basis for the setback. The effect on the views to houses with turbines within 2,500 feet is not as stated by the County. Instead of the 27 houses assumed to be affected there are actually only eleven that would have other than an insignificant view at the most, due topography and screening. Of these eleven houses, the primary viewshed of all but one is not towards the turbines within 2,500 feet. Further objective evidence in the record establishes, that the view of the turbines ceases to dominate ("loom") at a distance of about four times the height of the structure. The degree to which visual impacts are adverse significantly depends on the viewer's location and sensitivity and the impact on view quality. Because of the fact that the primary viewsheds of houses that can actually see the turbines within 2,500 feet are overwhelmingly away from or not directly towards the turbines and because most of the turbines are located in "Zone 3", as described in Dr. Priestley's supplemental testimony, the visual impacts with a 1,320 foot setback for this project are less than significant. For projects like the Kittitas Valley Wind Power Project, whose siting and design have shaped its overall visual impacts, any visual impact that might be identified as affecting small numbers of viewers must be evaluated in the context of the fact, that on the whole, the projects visual impacts are relatively low. Further, the DEIS and Addendum thereto concluded that the visual impact of the project would not constitute significant impacts because of the low to moderate levels of sensitivity of the affected views. Moreover, as the SEPA lead agency, it is appropriate and necessary for EFSEC to balance the moderate impact to a handful of residences against the overwhelming public benefit of the Kittitas Valley Wind Power Project.

32. The Applicant has agreed to the development standard items addressed in this document taken from the proposed Development Agreement Between Kittitas County, Washington and Sagebrush Power Partners, LLC submitted in the County process for which there was no disagreement. These development standards and the above considerations given to the shadow flicker issue and the potentially perceived "looming" effect, give due consideration to the local community interests and governmental interest affected by the Project.

PREEMPTION

Applicant's Good Faith Efforts to Resolve the Noncompliance Issues.

33. That Applicant was unable to reach an agreement to resolve the issues between it and the County in effort to achieve local land-use consistency is apparent. The near-impossibility of such efforts made both for the original 2003 County application and the 2005-2006 effort are detailed at great length in the Prefiled Testimony of Chris Taylor, (Ex. 20 (CT-T) and the Supplemental Prefiled Written Direct Testimony of Chris Taylor, (Ex. 20 SUP (CT-T SUP) and Dana Peck, (Ex. 42 (DRP-T)). Nonetheless, determined to make all reasonable efforts to obtain such land use consistency, the Applicant expended huge efforts, in good faith, to attempt to discern and then satisfy the expectations of Kittitas County.

Applicant has Made all Reasonable, Good Faith Efforts to Achieve Consistency with the Kittitas County Comprehensive Plan and Zoning Code

34. Chris Taylor's testimony describes Zilkha's and later Horizon's multi-year efforts to proposed changes in the County ordinance, seek clarity in the application review process, establish

an understanding that the County would not independently seek to exercise SEPA authority, and the County's assertion to EFSEC that the County would, itself, ultimately judge whether the EFSEC EIS was "adequate" for Project review. (Ex. 20R (CT-R); Ex. 20 SUP (CT-T SUP)). Recognizing the EFSEC requirement that the Applicant make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve noncompliance, the Applicant proposed two different ways to "change" the County's wind farm ordinance in order to achieve "consistency" by "decoupling" the comprehensive plan and zoning requirement of KCC 17.61A from the site-specific permitting requirements. (Ex. 20 (CT-T) pp 11-12). The County refused. *Id.* The Applicant then filed its first County application pursuant to KCC 17.61A, on March 27, 2003 ("first application"). The Applicant then commenced protracted efforts to seek a County hearing. Among many problems with the County, the Applicant faced significant challenges with the County's legal position regarding EFSEC's role as the SEPA lead agency, in particular the County's efforts to subvert and preempt EFSEC's statutory SEPA lead agency role. As Chris Taylor testified, the County took the position that the County could not review a local permit application until the County had determined "in its own judgment, that he EFSEC DEIS, and response to the DEIS, was adequate. (Ex. 20 (CT-T) p. 12). "The County's position effectively meant that we faced two permitting processes, with redundant and sometimes conflicting requirements and expectations." *Id.* at p. 14. *See also* Ex. 20R (CT-R), p. 4. After the County filed documents with EFSEC demonstrating its intent to subvert EFSEC's SEPA authority, the Applicant filed a request for preemption with EFSEC pursuant to WAC 463-28-040 on February 9, 2004, and withdrew the first County application.

35 The Applicant's good faith efforts in 2005-2006 began with Horizon's decision to

withdraw its first request for preemption in the summer of 2005. Having been through the initial round of hearings conducted by EFSEC in 2004, the Applicant resolved to revise and reduce its project and resubmit its application to the County. The revisions were a conscious effort to address the concerns it had received from both the County and the public about the initial KVWPP submittal. (Ex. 20 Sup (CT-T-Sup) pp7-11). Before submitting its new application, the Applicant met with EFSEC and the County and informed them of its intentions. On September 30, 2005, the Applicant submitted a Development Activities Application pursuant to Kittitas County Code 17.61A, which was followed by a revised Application on October 14, 2005 utilizing county-mandated forms. Following an October 17, 2005, determination from the Kittitas County Department of Community Development Services that the Application had been deemed complete, and at the request of both EFSEC and the County, the Applicant withdrew its initial request for preemption on October 19, 2005.

36. Taking into consideration the County's permitting process lacked specific development regulations or criteria that could be utilized for crafting the requisite Development Agreement, the Applicant's staff anticipated a lengthy series of informal and formal discussions with County staff in order to determine what kind of criteria the Applicant should be addressing and what kinds of materials were expected by the Kittitas County Board of Commissioners ("BOCC"). (Ex. 42 (DRP-T) pp 7-8). The Applicant anticipated that the County staff would actively participate in the negotiation of material issues and specific elements of the Development Agreement, as had occurred previously with the County in the process leading up to presentation and adoption of a final Development Agreement for the Wild Horse Project, also in Kittitas County. (Ex. 20 (CT-T) pp 8; *See* also, Testimony of James Hurson, Kittitas Deputy Prosecutor, at Verbatim Transcript of

Proceedings of Kittitas County BOCC Special Meeting of May 3, 2006, at pp 40).

37. Early in the process, it became apparent to Applicant that the BOCC would not follow its prior practice of delegating to their staff a role in the process to enable them to address site-specific issues. Moreover, the process afforded no ability to directly contact decision-makers on such specific topics (Ex 42 (DRP-T) pp 8-9), leaving the Applicant no effective means to "negotiate" a development "agreement." The Applicant did not abandon the process. Instead, it recognized that a public process that did not allow for direct negotiation could lead to miscommunication and misunderstanding, and consequently, its staff consistently initiated staff-level meetings in an attempt to assure it was providing the County with desired, timely information. *Id.* Those meetings were frequently followed up with a written summary from the Applicant to County staff in order to ensure that the Applicant had fully understood the general points discussed with staff. *Id.*

38. During this process the Applicant repeatedly tried to anticipate the appropriate response to issues presented to it by the County. Yet with no apparent consideration of the materials, proposed Findings of Fact, and testimony presented for consideration, and clearly concerned with the ability of property owners to subdivide the surrounding lands into sprawling residential developments in violation of the County's Comprehensive Plan and zoning code, on February 13, 2006 the Planning Commission recommended that the BOCC deny the Applicant's application. (Applicant's Second Request for Preemption, June 20, 2006, Exhibit 2). (*See, e.g.*, comments of Mark McClain, Planning Commission Member, at Verbatim Transcript of Proceedings of Kittitas County Planning Commission Special Meeting of January 30, 2006, at p. 66 l. 13: "I feel that there

was significant testimony regarding the impact to lands in terms of future development" and p. 67 l. 17: ". . . his testimony was that it's valuable, more pristine, high-end development . .").

39. At the BOCC public hearing of March 29, 2006, five months after its application to the County was deemed to be complete, the Applicant was finally presented with a list of concerns directly from the BOCC, including each Board member expressing diverse mandatory setback distances, all significantly greater than the Applicant had proposed many months before. Although the County overtly acknowledged that it was unable to present these concerns earlier due to the nature of its own process, the Applicant requested (and was given) just 5 minutes to caucus in order to respond. (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of March 29, 2006, at pp 20). Despite the County's months-long delay in openly and directly disclosing these concerns, the Applicant reviewed its materials already in the record, including a previously submitted matrix of information, and resolved that it had created a sufficient record for the BOCC to determine land-use consistency with the County's comprehensive plan and zoning code. *Id.* at pp 25-26. The BOCC Chairman himself acknowledged that the matrix submitted by the Applicant was what the Board had wanted. *Id.* at 26.

40. During the many nights of hearings before the Board, the Applicant repeatedly pointed out the changes it had made since its initial proposal in 2004 in effort to remedy the concerns about the Project. Expert reports such as that of the Applicant's property values expert, P. Barton DeLacy, had been updated due to the concerns raised by the public in meetings and hearings on the original application. *Id.* Rather than starting from scratch, the Applicant followed the County staff's advice to use the Wild Horse template for the KVWPP Development Agreement. *Id.* at 30. In response to

the public's concerns about visual impacts, the Applicant voluntarily reduced the projected number of turbines proposed from 121 to between 65 and 80 in effort to mitigate visual impact. *Id.* at pp 31-32, removing turbines in the northern tier of the Project, where there is a greater concentration of homes and developable lots. (Ex. 20 SUP (CT-T SUP) pp 10). The Applicant also submitted a matrix of requested information to the Board early in effort to afford the public and the parties ample opportunity to consider it. *Id.* at pp 37-38.

41. On April 12, 2006, despite never having engaged the Applicant in a discussion of turbine setbacks from non-participating property owners, the BOCC gave the Applicant an ultimatum: either agree to accept an unknown, undefined larger setback than proposed in the Development Agreement, or the BOCC would kill the process that night. *Id.* at pp 55-56. The Applicant was given ten minutes to decide whether its Project, by then four years in the process, would be killed by its failure to agree to an unknown, but larger, setback being demanded by the BOCC was asked "to address whether this [BOCC hearing] is a waste of time or not". *Id* at 56. Despite the 'take it or leave it' ultimatum, the Applicant iterated that it was very confident that "these sorts of -- what we would call micrositing issues can be worked through on just a real open conversation on Development Agreement provisions. We think that, you know, both parties negotiating reasonably can find answer to these questions." *Id.*

42. In response to continuing questioning by the BOCC and County staff about the exact number of turbines, the Applicant agreed to limit the Project to a maximum number of 65 turbines. (Applicant's Second Request for Preemption, June 20, 2006, Exhibit 7, letter dated April 25, 2006) In response to the BOCC's mistrust of the Applicant's acknowledged agreement to limit turbine

construction to pre-defined corridors within a larger subarea boundary, the Applicant offered that if other issues could be resolved, it would reduce the subarea boundaries and not seek additional the turbine locations without the County's consent. *Id.* at pp 42-43.

43. Insofar as shadow flicker was a concern to the County and public, the EFSEC DEIS and Addendum thereto did not conclude that the Project presented probable significant adverse impacts. Nonetheless, the issue remained of concern to the public. Consequently, at the very first joint BOCC/Planning Commission public hearing in January, 2006, the Applicant submitted an additional technical memo addressing shadow flicker for the reduced Project layout, the analysis of which included several conservative assumptions which exaggerate the impacts on any individual residence. The recommended mitigation measures proposed by EFSEC's independent consultant in the DEIS (pages 3.4-9 through 3.4-12, 3.4.22 through 3.4.23) included planting of trees; installation of shades; and that installed shades be placed on an electric timer. Notwithstanding these recommended mitigation measures, the Applicant further offered that if an adverse impact were identified, new technology could be utilized that can curtail the operation times of certain turbines as needed to reduce the shadow flicker to a virtually imperceptible level. This offer to totally eliminate any demonstrated adverse shadow flicker impact was never even acknowledged, nor accepted, by the BOCC. Blind to this offer, the County used shadow flicker as a basis to deny the Project. (Applicant's Second Request for Preemption, June 20, 2006, Exhibit 1 Finding of Facts and Conclusion of Law 19, 23, 24 & 25).

44. The Applicant initially proposed an industry-standard setback of 1,000 feet from existing, non-participating residences (March 27, 2003 and October 14, 2005 Development Activities

Application at Section 2 pp 3 and Section 2 pp 3 respectively). During the comment period for both the DEIS and DEIS Addendum (following re-submittal in 2005), Kittitas County never submitted a comment expressing a belief that the 1000 feet was inadequately analyzed or that the analysis failed to analyze the perceived "looming " effect on neighboring residents. There is no documentary record whatsoever to substantiate this as an issue for environmental impact analysis under SEPA at the behest of Kittitas County.

45. At its April 12, 2006, public hearing, the BOCC simply told the Applicant that a 1,000 setback from existing, non-participating residences was a "deal-killer." (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of April 12, 2006, at pp 51). The BOCC demanded that the Applicant "present additional information to suggest a setback from their perspective, mitigated the impacts" (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of April 12, 2006, at pp 62) yet the BOCC also berated the Applicant for submitting "new information," totally precluding any reasonable ability to "negotiate" without exchange of information. (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of April 27, 2006, at pp 30). Notably, this was not a command or motion by the BOCC to require the Applicant to prepare and submit a new Development Agreement. In fact, prior to the County's final action denying the Project, the BOCC never adopted any formal motion or took any vote to provide any formal direction to the Applicant regarding the "acceptable" setback distance. (EFSEC Tr., pp. 447). Notwithstanding the fact that Kittitas County had failed to timely or appropriately raise this issue as a basis for added environmental review, the Applicant continued to proceed in good faith in the process of review and acquiesced to the ultimatum delivered on April 12 to either offer up a larger setback or the BOCC would kill the Project that night.

46. By letter dated April 25, 2006 to the BOCC, (Exhibit 7 to Second Request for Preemption) the Applicant agreed to extend the originally proposed setback by 32%, up to a distance of one-quarter mile, or 1,320 feet. *Id.*

47. The BOCC refused to discuss this significantly increased setback proposal of 1,320 feet at its April 27, 2006, public hearing because the BOCC's "biggest concern" was not about the distance proposed but was instead about the fact that the increased setback proposal did not come in the form of a newly drafted Development Agreement (*see* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of April 27, 2006 at pp 25-26). The Applicant had sought but received no guidance from County staff as to what the BOCC would expect to be presented in order to answer the BOCC's request for information regarding a larger setback. County staff simply suggested that the Applicant read the transcript for itself and try and discern the BOCC's desires. (Applicant' Second Request for Preemption, June 20, 2006, Exhibit 3 Letter dated May 22, 2006). Again, the record contains no citation to a specific motion regarding the acceptable form of document in which to present information on a larger setback, because none was made. Despite this lack of clear instruction, the BOCC refused to discuss, at its April 27, 2006 public hearing, the materials presented in good faith by the Applicant simply because it did not like the form presented by the Applicant in response to confusing and sometimes conflicting suggestions by the various BOCC members on April 12, 2006.

48. On May 3, 2006, the BOCC variously announced desires to establish setbacks of 2,000 feet from non-participating property lines; 2,500 feet from non-participating landowners' residences;

one-half mile; and one-half mile to 3000 feet. (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of May 3, 2006 at pp 12, 23 and 27). During that hearing, the BOCC appeared to agree that in addition to residential setbacks, a 2000-foot setback would be required from all non-participating property lines. (*See* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of May 31, 2006 at pp 53). Yet in the County's final decision, no mention was made regarding the 2000-foot setback or any property line setback. (Applicant's Second Request for Preemption, June 20, 2006, Exhibit 1). This disparity is extremely disturbing for at least three reasons. First, it demonstrates the impossibility of accurately divining the BOCC's intent and responding accordingly. Second, the 2000-foot property line setback lacks any support in the record, and should be considered arbitrary, particularly given the size of properties and the ability to orient improvements as desired by the property owners. (Ex. 36 (PBD-T) pp 11). Third, as shown in Planning Director Piercy's cross-examination testimony, either the County staff actually ***did*** confer with the BOCC regarding setback issues outside of the public hearing process (vehemently denied under oath) or the final decision itself does not reflect the BOCC's actual intent, and departs from the BOCC's deliberations. (EFSEC Tr. pp 447 - 449). *See also* Verbatim Transcript of Proceedings, Kittitas County BOCC Special Meeting of May 31, 2006 at pp 41 - 45.[1] This was the first articulation of the BOCC as to what it viewed as an acceptable setback. Upon receiving the Applicant's respectful reply from Mr. Chris Taylor that a 2,500 foot setback would remove so many turbines as to make the Project unviable, the Chairman of the Board, Mr. David Bowen, acknowledged the impasse, but also acknowledged that "Mr. Taylor's comments regarding the time spent on this and the effort that's gone into this, everybody has taken this quite seriously and I appreciate those comments you

[1] Regardless of the reason the 2000-foot property line setback was not included, it is not part of the County's decision related to land use consistency, and there is no record supporting such a setback for EFSEC consideration.

[Applicant] made." *Id.* at 46-48.

49. The BOCC did not attempt to discuss a smaller setback, but instead voted to preliminarily deny the application "based on the contents of the Development Agreement dated May 1, 2006, which contains fatal flaws and inconsistent language which the applicant has indicated for the record they do not wish to correct." *Id.* at 54.

50. In this fashion, the Applicant's years of good faith, reasonable efforts to demonstrate its application was consistency with the Kittitas County Comprehensive Plan and zoning code came to an abrupt end. As discussed below, it is most notable that the BOCC never discussed how the application was consistent with the Kittitas County Comprehensive Plan and zoning code, notwithstanding the fact the Applicant submitted draft Findings of Fact and Conclusions of Law with its October, 2005, Development Activities application to support the application's consistency with the same. The application was denied based on a development regulation – setback distance – that was not existent, announced or disclosed until after the record was closed.

51. The Applicant's good faith efforts were made, despite a County process that is uniquely complex and discretionary, which duplicates the EFSEC role and process, and does not meet EFSEC standards for the expeditious siting of energy facilities The Applicant's good faith efforts were made in the context of a uniquely complex and flawed process. The County's hearing record reflects the following procedural impediments, which appear to the Council to be contrary to mandates under Washington's Growth Management Act, RCW chapter 36.70A and the Regulatory Reform Act, RCW chapter 36.70B:

(1) there is no adopted procedure to follow, and the Code does not make clear to the applicant or the public that a joint "hearing" before two distinct hearing bodies will occur and be continued month after month after month; (2) dual hearing bodies appear to be prohibited by law; (3) while continued hearings are common, the Kittitas County process is not compatible with the "single hearing" rule; (4) the process breeds tremendous confusion, conflict and delay, confusing even the decision makers; (5) instead of considering the KV Project under the County's GMA-based Comprehensive Plan policies and zoning code, the BOCC denied the Project due to a perceived lack of "compatibility" with the "neighborhood." *See,* Resolution 2006-90, Findings 27, 38, 39, and 39 [sic, on p. 11]. The BOCC mischaracterized the area, and it was apparent that neither the BOCC or County staff had any awareness of the character of extremely low density nature of the area, demonstrating scattered development and substantial topography that will minimize views of the turbines. The Siting Council has visited the site, and finds that the Applicant's description of the population and characteristics are accurate. The density and character of the existing development (used by the County to deny the Project) has been grossly exaggerated both by the County and other intervenors; (6) neither the wind farm ordinance nor the application forms provide "timely and predictable procedures" as required by the Regulatory Reform Act. Lacking a clear process, in both the 2006 proceedings, and in the Applicant's first attempt to seek a land use consistency determination, the County attempted to assume EFSEC's SEPA lead agency authority; (7) the County's use of a development agreement in this process, essentially requiring an "agreement" with uncodified regulatory requirements as a condition of a permit, is not consistent with the Legislature's purpose or intent for development agreements, intended to provide a mechanism to ensure predictability in complex development application processes; (8) the County's process appears to be deliberately crafted to make it nearly impossible for an applicant to

seek preemption through EFSEC's statute and applicable rules, and thereby establishes a process that is not based on local criteria and standards, duplicates EFSEC's permitting role, and is not considered expeditious, particularly as part of the EFSEC process. The process renders it impossible for an applicant to seek a "change in" the County's comprehensive plan and zoning without also seeking a site-specific permit from the County, and the inextricably "bundled" quasi-judicial and legislative processes appear flawed under the GMA, and also duplicate EFSEC's sole and exclusive jurisdiction over the siting and construction of major energy facilities.

Horizon and the County were Unable to Resolve the Noncompliance Issues.

52. As noted above, WAC 463-28-040(2) requires the applicant to show "[t]hat the applicant and the local authorities are unable to reach an agreement which will resolve the issues." The record is clear. For the reasons discussed above, the Applicant and the County were unable to resolve noncompliance issues. A failure to reach agreement is not the same thing as a failure to make all reasonable, good faith efforts. Neither EFSEC's statute nor its administrative rules require land use consistency – only reasonable, good faith efforts.

53. The fundamental substantive reason Horizon was unable to secure a resolution of land use consistency issues was the County's lack of understanding regarding the aesthetic issues, misapplication of the EFSEC DEIS and Addendum thereto, and a decision regarding setbacks that lacks any basis in the record, and is devoid of any policy rationale.

Alternate Locations Within the Same County Have Been Reviewed and Found Unacceptable.

54. To seek preemption, an applicant must show that "alternate locations which are within the same county and city have been reviewed and have been found unacceptable." WAC 463-28-

040(3). An analysis of alternative sites in the County for the KVWPP was included in Chapter 2.7 of the EFSEC DEIS, the EFSEC Supplemental DEIS, Chapter 2.4.1 of the Kittitas County DEIS for the enXco Desert Claim Wind Power Project and Chapter 3.16 of the Wild Horse Wind Power Project DEIS.

55. The analysis in the EFSEC DEIS was the same used by Kittitas County for its DEIS for the enXco Desert Claim wind farm site and the Wild Horse DEIS. The County denied the enXco Desert Claim Project, while approving the Wild Horse Project. These DEIS's established criteria for the analysis of alternatives, and then reviewed potential sites in Kittitas County. The criteria are as follows: 1) sufficient wind resource (the most important); 2) proximate/adequate transmission facilities; 3) large land area; 4) absence of significant environmental constraints; and 5) property owner interest/property availability/control of property. The DEIS's concluded that although other sites for wind power generation may exist in Kittitas County, none would satisfy the test for availability or practicability for the KV Project. Furthermore, given that other companies are developing these alternate sites, these locations are not available to the Applicant.

The KVWPP Site is a Unique Opportunity with Proven, Robust Winds and Sufficient On-Site Transmission Facilities with Ample Capacity

56. The Applicant has considered other locations in the County, but has not found any that are acceptable alternatives to the proposed site. The issue of alternative sites has also been addressed in detail in EFSEC's Supplemental DEIS. There are many factors that make this proposed site unique. First of all, there is a robust and extremely well documented wind resource that has been measured carefully during a period of over six years. (EFSEC Tr. 698 - 702). The Applicant is not aware of any alternative sites that are equally well documented that are available. The fact that

predictive modes and "wind maps" indicate potential in other areas of the County is no substitute for high quality, long term, on-site data. This type of data dramatically reduces the financial risk of the Project from an investment prospective. (Ex. 20 SUP R (CT-SUP R)).

57. The Project benefits from the presence of multiple transmission lines of appropriate voltage and with adequate capacity to carry the entire output of the Project. The lines proposed to interconnect to are literally overhead and require no new construction of feeder lines and entail additional environmental impacts. (Ex. 20 (CT-T) p23). A System Impact Study has been completed for both Bonneville Power Administration and Puget Sound Energy and this has confirmed the viability of interconnecting the Project to the adjacent 230kv lines. In addition, these proposed interconnections can be achieved without substantial network upgrades, which further enhance the Project's economic viability. The Applicant has secured advantageous transmission queue positions with both BPA and PSE due to the fact that those requests were originally filed several years ago and are senior to others in the queue. (Ex. 20 SUP (CT-T SUP) pp 20).

58. The Applicant has existing land agreements with participating landowners and continues negotiations with neighboring property landowners. It is not self evident that owners of other potential sites would be willing to enter into such agreements with Horizon. An exhaustive environmental analysis has demonstrated that the impacts to the environment and in particular wildlife and habitat, of the Project at the proposed site are minimal.

The Wild Horse Expansion Site is not an "Alternative" to the KVWPP Site

59. The Applicant currently has an option to purchase a small amount of land (about 1,400 acres) from the same private landowner from whom they acquired rights to the Wild Horse site. With regard to any development interests the Applicant may have in the vicinity of the Wild Horse Project, the Applicant does not at this time have a formal proposal for an additional wind project in that area and has not applied for any permits. The Applicant has two temporary meteorological towers on that property that are currently collecting wind data. The preliminary assessment is that the property under option could accommodate perhaps 20 wind turbines. This is only an initial estimate, but clearly this site is in no way comparable to the KVWPP site in terms of the magnitude of wind energy potential, as it is roughly $1/5^{th}$ the size of the KVWPP site in terms of acreage. Without the presence of existing infrastructure (roads, step-up substation, feeder lines, *etc.*) at the adjacent Wild Horse Project site, a project of this size would not be economically viable under current market conditions. Such a project would best be characterized as an expansion of Wild Horse, rather than a new project, which would require the current owner of Wild Horse to submit an application to the County for an expansion of the current Project. (Ex. 20 SUP (CT-T SUP) pp 21).

The enXco Desert Claim and Invenergy Sites Have Been "Reviewed" and are Not Available or "Acceptable" Alternatives to the KVWPP Site

60. The Applicant is aware of only one other formally proposed project in Kittitas County – the enXco Desert Claim Project. As is abundantly clear from the Record, the County denied this project, and if enXco goes forward, enXco will seek EFSEC preemption. The County alleges that another wind power firm is considering a potential site south and east of the Wild Horse site. The details are unknown for the proposed site, but it appears that the site is under consideration by

Invenergy Wind, LLC, a Chicago-based wind power developer. The County admitted that no formal pre-application conference has occurred with the County, and the Invenergy Wind site has submitted nothing to the County in writing. What is clear from the record is that regardless of where any hypothetical Invenergy Wind site is proposed in the County, wind energy is not a permitted use, and the project is explicitly prohibited unless and until Invenergy Wind successfully navigates through Kittitas County's uniquely byzantine requirements for siting wind energy facilities.

61. Notwithstanding the fact that any Invenergy Wind site is prohibited by the County, the Applicant believes that the Wild Horse Project site occupies the most desirable ridges for wind turbine placement in that general area. This is also the opinion of the professional meteorologist consulted in developing the Wild Horse Project, who testified that the due to poor wind resources, the Invenergy Wind site is probably capable of a maximum 50 MW site – a project size that is not considered viable, and certainly is not an acceptable alternative to the robust generation capacity of the KVWPP site. (EFSEC Tr. pp 706). Furthermore, it the Applicant's understanding that the remaining land belonging to the private landowner from whom the Applicant acquired the rights to the Wild Horse site, is under option for conservation acquisition, and that some of that land has, in fact, already been purchased for habitat and wildlife conservation purposes. (Ex. 20 SUP (CT-T SUP) pp 22)). In addition, the Applicant believes that the Wild Horse project will consume most of the remaining available capacity on PSE's Intermountain Power transmission line to which it will interconnect, leaving little if any availability for future projects in that immediate area. (Ex. 20 SUP (CT-T SUP) pp 22). BPA transmission lines to the west of the Wild Horse site are 500 kV lines, and therefore interconnecting to them would likely cost somewhere on the order of $10

to $20 million, which would likely be cost-prohibitive. (Ex. 20 CT-T) p.23)

62. As discussed above, KCC Chapter 17.61A does not allow wind farms as a permitted use anywhere in the County – they are a prohibited use. The County chose, after considerable debate on the issue, to not go through a zoning process that would designate areas in which a wind farm would be permitted. The BOCC instead adopted a project-specific siting/permit process to consider proposed wind power projects on a case-by-case basis. This wind farm siting process is more complex and contains more regulatory hurtles than are required for siting a fossil-fuel fired power plant, nuclear plants, pipelines, or any other type of energy-related facility in the County, without policy rationale for treating renewable energy more strictly than conventional greenhouse gas-producing energy facilities. In effect, under the County's ordinance, there are no alternative areas of the County that are "zoned" for wind energy facilities. There is no site or area in the County that an Applicant can identify that allows a wind farm as a permitted use. In other words, without going through the entire County process for each individual proposed site, there is no zoning district or area where a wind farm can be sited. In essence, an Applicant is unable to find any place in the County in which a wind farm is permitted without submitting multiple applications through the County siting/permit process.

63. The smaller projects owned by Applicant elsewhere and cited by the County in Mr. Piercy's rebuttal testimony (Ex. 51 (DT-T) Exhibit 51-4) are not priority projects for the Applicant, due in part to their small size. It is important to note, however, that these projects are proposed to interconnect at lower voltages (North Collins Project at 34.5kV and Sardinia Project at 115kV) than the KVWPP Project (230kV) thus the associated interconnection costs are

substantially lower than for the KVWPP Project. Higher priorities have been placed on larger projects in New York, including Clinton County Project with 200 MW, Dairy Hills Project with 120 to 132 MW, Machias Project 90 MW and Batavia Project at 80 MW.

64. These projects are currently established in the interconnection queue. Interconnection requests for the Sardinia and North Collins projects have not been made, partially because economics of scale continue to make them uncompetitive relative to larger projects in the state. (Ex. 20 SUP R (CT-SUP R) pp 10).

The Project Serves and Implements Interests of the State.

65. WAC 463-28-040(4) requires a request for preemption to address "[i]nterests of the state as delineated in RCW 80.50.010." These interests are set forth in RCW 80.50.010 as follows:

> "The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.
>
> It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available

and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses,

including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay."

66. To address the "interests of the state," it is first and foremost essential to understand that the regulation of the siting, construction and operation of energy facilities is a state-wide concern, and that the very existence of EFSEC reflects the Legislature's recognition that the siting, construction and operation of energy facilities cannot be impeded by the inevitable parochial concerns raised at the local level, and cannot be impaired by the opposition of a small handful of property owners voicing subjective complaints. The statutory language in this regard is clear: "It is the intent to seek courses of action that will ***balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public***." 80.50.010. [Emphasis added]. In all issues of "public interest" set forth in the statute, the frame of reference is "balance" and "broad interests of the public," not the interests or complaints of individuals. This includes the following "(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment." Sections 1.2 and 3.5 of the DEIS describe the purpose and need for the Kittitas Valley Wind Power Project and electrical energy demand in the region. Section 1.2 states in part:

"The purpose of the KVWPP is to construct and operate a new electrical generation resource using wind energy that will meet a

portion of the projected growing regional demands for electricity produced from non-renewable and renewable resources."

67. DEIS Section 2.1 states that recent national and regional forecasts predict increasing consumption of electrical energy that will continue into the foreseeable future, requiring development of new generation resources to satisfy the increasing demand. It points out that there is a growing market for electricity powered by "green resources" in the Pacific Northwest. As a result of RCW 19.29A signed into law in 2001, sixteen of Washington's electric utilities were directed to offer a voluntary alternative energy product (essentially an electricity product powered by green resources) starting in January 2002. Local and regional markets for green power have been increasing. These are the largest utilities in the state representing over 80 percent of the total load in the state. Thus there is an additional sub-market demand for alternative electricity for Washington utilities. Further the majority of the other utilities within the state are looking at alternative resources and conservation. (Testimony of Tony Usibelli, EFSEC Hearing Transcript p.662).

68. Wind resources, particularly in the Pacific Northwest, have several unique attributes which make them especially valuable when compared to more conventional electricity generating resources. Among these characteristics are price stability (because the fuel is free), easy integration into the Northwest's hydro-based electric system, avoidance of greenhouse gases and risk minimization for purchasing utilities. (Ex. 43 (RH-T Sup) p.2).

69. Several regional electric utilities have recently issued requests for proposals (RFPs) to

acquire wind power, including Puget Sound Energy, Pacific Power, Avista Corporation, and Portland General Electric. This trend will accelerate if the proposed ballot initiative, I-937, passes in November 2006, and implements requirements for all the state's electric utilities to increase their use of renewable energy by 15% by 2020.

70. The energy crisis of 2001 and the volatility of the price of natural gas have also created increased demand for wind power to meet the region's future power needs. Puget Sound Energy's 2005 Least Cost Plan has a section entitled "Gas Projects are Losing Favor" which states: "Typically, natural gas-fired projects are easier to site and permit in western Washington than other fossil-fueled plants, and due to the proximity to natural gas pipelines and transmission to the major load centers, natural gas projects had been the default choice in new generation. Today, with high natural gas prices, these projects are becoming less economical to own. They typically operate on the margin, and require sophisticated and expensive hedging strategies to manage fuel price risk and related volatility."

71. Development of sufficient wind resources in the Northwest will directly address this price volatility. Wind is cost competitive with existing and projected prices of CCCTs, and, because the fuel is free, wind is not subject to the wild price fluctuations associated with gas and oil fired resources. Wind power's short construction time and ability to capture varying wind currents (because of strategic turbine positioning) within a single site also create built in hedges against the seasonal, and even daily, price fluctuations inherent in gas fired resources. (Ex. 43 (RH-T Sup) p 4).

72. Wind power offers utilities more predictability regarding their future energy costs, because once a wind farm is constructed, there are no fuel costs and very little maintenance costs. Wind power developers, unlike developers of natural gas plants, routinely offer utility customers long-term (i.e. 20 years) fixed-price contracts. Increasing customer demand for green energy, the environmental attributes of wind power, and its fixed price have led the region's utilities to include significant percentages of wind power in their latest integrated resource plans. PacifiCorp's 2004 Integrated Resource Plan's "Planned Resources" section states: "PacifiCorp concludes that since the Company is committed to continuing the pursuit of renewable generation as a viable solution to meeting customer demand, it is reasonable and prudent to assume that 1,400 MW of renewable resources should be included as a Planned Resource." Avista's 2005 Electric Integrated Resource Plan reinforces that message in the following table:

TABLE 7.1: NORTHWEST IOU LOADS AND ESTIMATED WIND ACQUISITION PLANS THROUGH 2016 (FROM AVISTA 2005 INTEGRATED RESOURCE PLAN)

Utility	IRP Wind Capacity (MW)	2016 Load (aMW)	IRP Wind Energy (aMW)	Wind Contribution to Load (percent)
Avista	**400**	**1,424**	**132**	**9.3**
Idaho Power	**350**	**2,187**	**116**	**5.3**
PacifiCorp West	**600**	**2,678**	**198**	**7.4**
Portland	**200**	**3,075**	**66**	**2.1**

General Electric				
Puget Sound Energy	**845**	**2,790**	**279**	**10.0**
Total	2,395	12,154	790	6.5

73. Energy prices have continued to rise, in part due to significant volatility of natural gas prices and supply. The risk to national security resulting from dependence on foreign supplies of natural gas and oil has become notorious. Nationally, regionally and in Washington State, there is a growing recognition of the need to develop a significant portfolio of renewable energy resources. The development of the limited number of suitable wind energy sites is now a priority at the state, regional and national levels. Supplying 10 – 20 percent of a utility's energy from wind (the range of most state renewable portfolio standards) will diversify away from the risks associated with reliance on traditional resources. These historical and/or emerging risks are well known: for hydro, they involve annual changes in precipitation and mandated fish protection measures; for coal, price escalation due to transportation costs and regulatory risks of greenhouse gas mitigation measures; and, for natural gas, the aforementioned price volatility. (Ex. 43 (RH-T Sup) p 4-5). By November 2006, we will know if the Washington State RPS Initiative 937 will be state law. If this occurs, then Washington State public and investor owned utilities will need to acquire roughly 1500 – 1700 average megawatts (or 4500 – 5000 megawatts of wind capacity) to meet the 15 percent RPS requirement by 2020. While I-937 applies to all renewable resources (e.g. biomass and geothermal), the vast majority of resources acquired to meet the standard will be wind

powered. (Ex. 43 (RH-T Sup) p 8).

74. While demand for wind energy has been increasing in the region, wind resources in the state of Washington are finite and limited. As stated in Section 3.5-6 of the EFSEC Kittitas Valley Wind Power Project DEIS; ..."Estimates of the wind resource are expressed in wind power classes ranging from Class 1 to Class 7, with each class representing a range of mean wind power density or equivalent mean speed at specified heights above the ground. Areas designated Class 4 or greater are suitable with advanced wind turbine technology under development today." It further states that the state of Washington, compared to other states, is "ranked in the bottom tier in terms of wind energy potential." This point is echoed in Avista's 2005 Integrated Resource Plan Executive Summary: "The wind limitation reflects Company agreement with the Northwest Power and Conservation Council (NPCC) that a limited amount of economically viable wind potential exists in the Northwest."

75. The DEIS also stated in Section 3.5 that the Ellensburg corridor in central Washington, where the KVWPP and the Wild Horse Project are proposed/located, sustains one of the strongest wind energy resources in the state. Data from several sites throughout the central Washington corridor indicates that exposed areas have a Class 4 to Class 5 annual average wind resource with a Class 6 resource during the spring and summer seasons. Wind resources of this class near transmission lines and load centers (such as the proposed KVWPP site) are finite and are critical to meeting state and regional energy needs with abundant energy at reasonable cost, a point that is particularly important when serving the western Washington market for renewables is considered. Puget Sound Energy's 2005 Least Cost Plan's "Wind is an Emerging Resource" section states:

"Wind projects are becoming much more attractive due to the maturity of wind turbine technology, the adequacy of wind resources in the Northwest, trends toward portfolio renewable standards (sic), and current tax incentives. Transmission system constraints that hinder the ability of projects to serve major load centers in the Puget Sound area make projects outside PSE's service territory less attractive."

76. Some of the larger utilities that are short in supply and that have gone with the least cost integrated resource planning approach have determined that, in many instances, renewable resources such as wind represent the least cost from an environmental and economic cost resource. Utilities are acquiring wind resources and several wind farms have been developed or purchased by Washington based utilities. (Testimony of Tony Usibelli, EFSEC Hearing Transcript p.663).

77. The State of Washington is part of an integrated electrical system that incorporates most of the western portion of this both the U.S. and Canada. During the winter heating season, the State of Washington is a net importer of electricity. This state is dependent on other portions of the U.S. and Canada to operate its electrical utility systems, just as they are dependent on us. In July of 2006, the state of Washington nearly had to curtail its system due to extreme hot weather conditions in California. As a result, it was necessary draw additional water through the hydroelectric system. These situations have negative affects on the region's ability to meet federal mandates to provide certain levels of stream flow to protect fish. Additional energy sources such as wind power or other renewable resources will help take pressure off the hydro system and better allow the State and region to meet our other environmental needs for fish. (Testimony of Tony Usibelli, EFSEC Hearing Transcript p.664-665).

78. Roughly 50 percent of all Pacific Northwest power is generated from hydroelectricity. This predominance of hydro is unique in the United States, and it provides the ideal mechanism through which to cost-effectively integrate wind resources into the Northwest electrical system. This integration capability exists because hydro dams can temporarily ramp up their output, either within the hour or for one or two hours in advance, to meet temporary variations in wind energy production. This capability allows wind to be easily "firmed up" for serving retail loads, without having to build back-up resources or use more expensive CCCTs for real-time load following. Therefore, because Northwest integration costs are low, it is to the region's economic advantage to maximize its available wind potential for electricity generation. (Ex. 43 (RH-T Sup) p. 6).

79. The KVWPP project is one of the best proposed projects in both in the county and the state, (Testimony of Ron Neirenberg, EFSEC Hearing Transcript, p.710) and is capable of interconnecting to either the BPA's or PSE's transmission system in a cost-effective manner. It is also located closer to major load centers (e.g. the Puget Sound region) than most other proposed wind project sites. Finally, it is located in a completely different area than the vast majority of likely Northwest wind projects (i.e. the Columbia Gorge) and, therefore, can provide utilities with some resource diversity relative to their likely purchases from other wind projects.

80. The Council considered the Applicant's Second Request for Preemption and finds that the Applicant has complied with all provisions and requirements of WAC 463-28 and that the Council has given due consideration to the local community interests and governmental interest affected by the project and shall provide for such in the SCA. Specifically the Council finds that to the extent

they are in inconsistent with the siting, construction and operation of this Project, the local land use plans and ordinances of Kittitas County should be preempted by the Council pursuant to RCW 80.50.110 and WAC 463-28.

3. ENVIRONMENTAL ISSUES

1. The Council considered other issues such as air quality, noise, wetlands, wildlife, water quality and quantity, visual resources, health and safety/public services, seismic/volcanic hazards, traffic and transportation, cultural resources, site restoration and whether the Applicant made a prima facie demonstration that the Project met the requirements of law and was consistent with the legislative policy and intent of Chapter 80.50 RCW.

2. Additionally, EFSEC is responsible for applying the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, which provides for the consideration and mitigation of probable significant adverse environmental impacts. WAC 463-47-140. Finally, the Council carefully considers all public comment received on proposed power facilities. RCW 80.50.090 and WAC 463-14-030.

Project Configuration and Construction

3. As indicated in the Draft DEIS, Supplemental DEIS, Addendum to the DEIS and Final EIS, the Council reviewed the impacts of the Project on all elements of the environment for the range of turbine sizes and numbers proposed in the Application. The analysis performed in the EIS's showed that, overall, the impacts from the various Project scenarios did not vary significantly from one scenario to the next. No scenario resulted in significant adverse

environmental impacts on any element of the environment. The Council, therefore, finds that allowing the Applicant to select a suitable Project configuration from within the range described in the Application, and analyzed in the EIS, is appropriate.

4. The Applicant shall be required to construct the Project within the time frame anticipated in the construction schedule presented in the Application, approximately twelve (12) months from the beginning of construction (*see* Application, Section 2.2.6). However, the Applicant shall not be restricted from operating and generating power from those individual turbines or strings of turbines that are completed prior to the strings of turbines remaining under construction. Further, if the Applicant requests that the Project be constructed in phases over a period exceeding that presented in Application No. 2003-01, the Applicant may seek an amendment to the Site Certification Agreement at a later date, allowing for any required additional environmental impact analysis and confirmation of land use consistency at that time.

Air Quality

5. Kittitas County is considered "in attainment" for particulate matter pollutants, meaning that ambient air concentration of particulate matter is below federal and Washington State Ambient Air Quality Standards. No monitoring data for other criteria pollutants is available for this area. The Project will have a slight, but non-adverse, impact on local air quality during its construction phase, but little to no such impact upon commencement of operations.

6. During construction, the Project's emissions will consist of exhaust emissions from construction vehicles and equipment and a variety of sources producing "fugitive dust." These include construction-related road traffic on unpaved roads, construction-related blasting and

excavation activities, as well as dust generated from the portable rock crusher and concrete batch plant. Mobile source emissions will be mitigated through encouraging carpooling for workers and rules to limit engine idling. Dust emissions will be mitigated through active dust suppression measures on unpaved roads and parking areas, and seeding of disturbed areas to reduce wind-blown dust. (ASC Sec. 3.2).

7. The Council finds that the expected construction emissions associated with the Project will have no adverse affect on the ambient air quality in the Kittitas County airshed. The Project will not emit regulated air pollutants when operating, and is therefore not subject to federal or state emissions control requirements during operations. Fugitive emissions will continue to be mitigated using the same measures implemented during construction.

Water Resources

8. Ephemeral creeks are the primary naturally occurring surface water resources on the Project site. The Project is not located in any floodplains. (ASC Sec 3.3.1).

9. Construction impacts to surface water resources could result from soils eroded by precipitation being transported into creeks and springs. The Applicant will implement mitigation measures to minimize these impacts: pursuant to a Construction SWPPP using Best Management Practices (BMPs) for management of stormwater, setbacks of facility structures from creeks, and compliance with general National Pollutant Discharge Elimination System (NPDES) permit for construction activities. (ASC Sec. 3.3.2.and 2.10).

10. Operation of the Project is not expected to further impact water resources, given that an Operational SWPPP using appropriate BMPs will be implemented. (ASC Sec 3.3.2.2 and 2.10).

11. Construction of the Project would require water for road construction, wetting of concrete, dust control and other activities. Water would be procured from an off-site authorized source and transported to the site in water-tanker trucks. No water would be used from the site. Estimated water consumption for all construction-related needs range between 2 to 5 million gallons. (Ex. 22 (AY-T, p. 14). The Applicant shall provide proof of a contract for all needed construction water supplies.

12. Water needs during operation will be minimal and primarily for bathroom and kitchen use at the O&M facility, which is expected to be less than 1,000 gallons per day. Water will be obtained from an exempt well that will be installed by a licensed contractor pursuant to Washington State Department of Ecology requirements. (ASC, Sec. 3.3.6.2).

13. During operations the Project would not produce industrial waste water. Sanitary waste water produced during Project operation will be discharged to and treated in an on-site sanitary septic system constructed in accordance with State of Washington requirements. (ASC Sec. 2.8).

Habitat, Vegetation, and Wetlands

14. The Applicant surveyed and mapped vegetation communities in the 6,000 acre Project area and associated collection feeder line corridors. The project is at the western edge of the Central Arid Steppe zone defined by the Washington State Gap Analysis. Vegetation communities within the KVWPP site consist primarily of sagebrush and grasslands. There are riparian zones along

ravines and lithosols (shallow soils) communities along ridge tops. The higher portions of the project area border the ponderosa pine zone. Habitat quality within the project area ranges from poor in many of the valley bottoms, to good along some of the ridge tops and flats. Generally, the ridge top habitats are in fair to good condition. More specifically, the ridge top lithosols are typically in good condition, containing a relatively intact vegetative structure and few non-native species. The deeper-soiled ridge-top habitats are generally in fair condition, with certain areas dominated or co-dominated by non-native species in the grass layer. (ASC Sec. 3.1.3 and 3.4.1).

15. The Project would result in temporary vegetation community impact of approximately between 231 and 371 acres of which approximately 145 acres is shrub-steppe. Of the approximately 93 to 118 acres of permanent impacts, approximately 45 acres would occur in shrub-steppe.

16. The Applicant proposes to mitigate all permanent and temporary impacts on vegetation in accordance with the WDFW Wind Project Habitat Mitigation Guidance Document (WDFW Wind Power Guidelines 2003). An approximately 539 acre mitigation parcel has been purchased within the 6,000 acre Project area. The parcel would meet or exceed the required habitat replacement ratios under WDFW Wind Power Guidelines for any of the Project scenarios considered. (ASC Sec. 3.4.7.8).

17. The Applicant would also implement BMPs to minimize introduction of weeds, implement a noxious weed control program, and would develop and implement a comprehensive post-construction restoration plan for temporarily disturbed areas, including habitat reseeding programs,

in consultation with WDFW. Sensitive habitat areas near proposed areas of construction would be flagged and designated off-limits to construction activities and personnel. (ASC Sec. 3.4.8).

18. The Applicant and Council For the Environment have agreed that, subject to Council approval, the Environmental Monitor for the construction of the Project should be independent and hired directly by the Council. They have further agreed that the Environmental Monitor should be a qualified engineering firm (or a person associated with such firm) such as the engineering firm that ultimately became the Environmental Monitor at the Wild Horse Wind Power Project in the spring of 2006.

19. The Trenching Protocol adopted during the construction of the Wild Horse Wind Power Project, a copy of which is attached hereto, shall be utilized during the construction of this project and included as part of the SCA.

20. The Council finds that with the mitigation measures proposed by the Applicant, and required in the Site Certification Agreement, mitigation is consistent with the WDFW Wind Power Guidelines, and as a result no significant adverse impacts to habitat are expected to occur.

21. A rare plant investigation has been conducted on the Project site. Known populations of federally or state-listed endangered, threatened, proposed or candidate plant species were not identified in the Project area or the corridors where collection lines would be constructed. No impacts to protected plants are therefore expected to occur. (ASC Sec. 3.4.5.1 and Sec. 3.4.6.1).

22. A wetland investigation was performed on the Project site. Potentially jurisdictional wetlands or waters of the United States have been identified at ten locations within or adjacent to the Project area. At four of the locations, the Project design will keep Project development away from streams and wetlands and avoid any impacts to waters of the United States. In six other locations, potentially jurisdictional streams (waters of the U.S.) were identified where impacts cannot be reasonably avoided. At the present time, the properties where stream crossings will be located are used for grazing. Three of the seven stream crossing locations have existing dirt or gravel trails adjacent to or crossing the streams. The total area of construction activities within jurisdictional waters (for all 7 crossings) will be approximately 1,270 square feet or 0.03 acres.

23. Potential direct impacts to wetlands and waters from the Project will result from construction of road and underground electric cable crossings of seven intermittent streams. The streams involved in the seven crossings are all intermittent streams that do not provide fish habitat. All crossings are a minimum of one mile from any stream reaches that support fish. Construction is expected to occur while the streams are dry, and thus there should be no impacts to water quality or to water-dependent resources during the construction of the crossings.

24. The design of the crossings will allow the periodic stream flows to pass through the porous rock bases of the crossing without increasing erosion or turbidity. Each crossing will involve excavating just enough existing streambed material to allow for the placement of roadbed crossing material or electrical cables. All work will occur when flows are absent or well below 5 cfs (cubic feet/second). Backhoes will be used to remove existing streambed material. The excavated material will be spread on the shoulders of the new and widened roads. The new road crossings will be constructed of clean quarry rock and clean gravel excavated from the locations of project

wind turbine foundations, or brought in from offsite sources. Electrical cables will be placed within the roadbed where feasible. Road crossings will be no wider than 34 feet in order to accommodate the construction equipment and transport trucks required to construct the wind turbine project.

25. The final profile and grade of each crossing will be as close to the original streambed as possible while providing a load-bearing surface that functions as a ford crossing. All crossings will be constructed in compliance with the Project's construction stormwater NPDES permit and its erosion control plan, which will include erosion control details for stream crossings. The DOE Eastern Washington Stormwater Manual, modified as appropriate for Kittitas County, will be used for guidance in development of the erosion control measures. The total volume of materials removed from jurisdictional waters will be approximately 47.1 cubic yards; the total amount of clean rock and gravel placed within the ordinary high water mark of jurisdictional waters will be approximately 60.5 cubic yards.

26. A comprehensive mitigation plan will be implemented for this Project. It consists of several categories of actions including BMP's and mitigation by preservation and enhancement of 8 acres of riparian land in the mitigation parcel described in ASC Sections 3.4.7.7-3.4.7.10.

27. A Joint Aquatic Resource Permit Application (JARPA) was prepared and submitted for this Project. The application was updated and supplementary information provided to the U.S. Army Corp of Engineers on February 11, 2004. It is presently valid through April 3, 2008. (Ex. 27 (PO-T) pp 4-8).

28. The Council finds that due to the mitigation for potential disturbance to the wetlands that may be affected by the Project, no significant adverse impacts to wetlands will occur as a result of construction and operation of this Project.

Fisheries

29. There are no fish-bearing aquatic resources located within the project area. Potential fish habitat within the project area is limited to low topographic areas between ridges. The WDFW Priority Habitat and Species database does not identify any fish-bearing streams within the project area. The nearest fish-bearing aquatic resources include the Yakima River, located more than 0.5 mile south of the project area, and Swauk Creek located more than 0.5 mile west of the project area. Within the project area, low topographic areas between ridges contain stream channels and seeps that flow into the Yakima River (Figure 3.2-1). These streams are small, narrow channels with intermittent flows that do not provide habitat for resident or anadromous fish. (DEIS 3.2-19 to 3.2-20).

30. Given the lack of potential fish habitat for fish species with federal or state protected status within the Project area, no significant impacts on fisheries are anticipated to occur with the implementation of BMPs and applicable stormwater permits that would control runoff, erosion and sedimentation into water bodies during construction and operation of the Project. The construction methods and control measures proposed by the Applicant, and required in the Site Certification Agreement, will be adequate to protect all wetlands and riparian corridors, and will protect aquatic conditions downstream.

Wildlife

31. Project construction may affect wildlife through loss of habitat, potential fatalities from construction equipment (for smaller mammal, amphibian and avian species), and disturbance/displacement effects from construction and human occupation of the area. Potential mortality from construction equipment on site is expected to be quite low. Disturbance type impacts can be expected to occur if construction activity occurs near an active nest or primary foraging area. Wildlife displaced from these areas may move to areas with less disturbance; breeding efforts may be affected and foraging opportunities altered during the period of the construction.

32. Construction impacts to wildlife will be minimized through use of slow moving construction equipment and the relatively short window for construction that will affect only a single nesting season.

33. The Council finds that mitigation measures implemented by the Applicant to protect and enhanced habitat, as described previously, will compensate for these disturbance impacts.

34. Beyond the direct impacts to habitat related to construction and operation of the Project, the Council has also given careful consideration to the particular impacts of wind projects on wildlife. Primary concerns voiced by the public and the Counsel for the Environment were the potential significance of avian mortality due to collisions with turbine blades and towers; adequacy of baseline avian studies used to estimate mortality; and impacts to bats.

35. To establish baseline information about wildlife use of the Project site against which to evaluate impacts, the Applicant's consultant conducted a variety of wildlife surveys, including surveys for avian use, raptor nests, and big game. The Applicant also reviewed unique and protected species lists and consulted with WDFW and the U.S. Fish and Wildlife Service (USFWS) to determine the potential occurrence of priority habitat and special and/or protected species. Applicant conducted and reported, in its Application, a thorough analysis of the potential impacts of the Project on wildlife in accordance with the study requirements of the WDFW Wind Power Guidelines.

36. Wildlife baseline studies were conducted for the Project. The wildlife portion of the ecological baseline study consisted of surveys of avian use, bald eagle surveys, aerial surveys for raptor nests, and incidental observations of other wildlife. The methods for the surveys are similar to methods used at other wind power projects. Information on sensitive wildlife species that may occur within the vicinity of the Project was requested from USFWS and WDFW. The baseline avian use data, other existing information from this site, and existing information from other wind project sites was used to assess the potential impacts of the project on wildlife. The duration and scope of the baseline study was greater than the duration and scope of many studies of proposed wind projects in the U.S., was collected using similar methods used at other projects in the Pacific Northwest, and is consistent with the recommendations of the wind power guidelines developed by the WDFW. Potential direct and indirect impacts of the Project such as bird and bat collisions with turbines, direct loss of habitat from the footprint of the Project, and potential displacement impacts were assessed.

37. *Avian Species.* Based on the available information from other projects, it is probable that some displacement effects may occur to the grassland/shrub-steppe breeding avian species occupying the study area. The extent of these effects is expected to be small (zero to several hundred feet) and would be consistent with effects from road development in general. Given the low raptor nest density near proposed turbines, few, if any, breeding raptors are expected to be displaced.

38. Some bird and bat fatalities are anticipated from the Project. The impact analysis considered the three different scenarios for turbine sizes and numbers. Relative exposure indices were calculated (use multiplied by proportion of observations where bird flew within the rotor-swept area) by species in order to identify which species may be most susceptible to collisions with turbine rotors. Spatial use of the Project area was also analyzed to determine whether there were areas of concentrated use by avian species within the Project site. Mortality rates for similar species and similar habitats were considered from other recently constructed and operating wind power projects, including projects in the Pacific Northwest region. This entire analytical procedure resulted in the estimation of mortality rates for avian and resident bat species for the Project. The Applicant also considered mortality rates for similar species and similar habitats for other recently constructed and operating wind power projects, including projects in the Pacific Northwest region. This entire analytical procedure resulted in the estimation of mortality rates for avian and resident bat species for the Project.

39. Based on the avian use studies conducted at this site, and the results of studies at other projects, approximately 2 to 3 bird fatalities per turbine (for the range of turbine sizes, which may be utilized for the Project) per year are anticipated. A variety of species may be found as fatalities,

and no individual species are expected to account for a large proportion of the mortality. No impacts to individual species populations are anticipated. Actual rates may be lower or higher, but the majority of raptor fatalities are expected to be American kestrels and red-tailed hawks, two very common raptor species. These fatality rates, or even significantly higher fatality rates, would not be expected to have population-level consequences for the likely species impacted. It should be noted that the fatality estimates may vary from the expected range based on many factors, including turbine size and other site specific and/or weather variables. Monitoring data will provide direct measures of the mortality levels.

40. The Project area is also located within the Pacific Flyway, one of four principal north-south bird migration routes in North America. The Pacific Flyway extends from the Pacific Coast to the Rocky Mountains. However, given the limited riparian and other important stopover habitat (water bodies), the Project area does not have unique stopover habitat, and therefore is not expected to have unique or significant risk to migratory birds.

41. The Applicant has incorporated several mitigation measures aiming at reducing avian mortality into the initial design of the Project. These measures include: minimizing construction of new roads by improving existing roads and trails; choosing underground (versus overhead) electrical collection lines wherever feasible to minimize perching locations and electrocution hazards; choosing turbines with a low rotation speed and use of tubular towers to minimize risk of bird collision with turbine blades and towers; using unguyed permanent meteorological towers; equipping all overhead power lines with raptor perch guards; and spacing overhead power line conductors to minimize raptor electrocution. (Ex. 29 (WE-T); ASC Sec. 3.4.3; and DEIS Sec. 3.2).

42. *Baseline studies.* Several members of the public, representatives of the Audubon Society, and the Counsel for the Environment suggested that the one year term for baseline studies required by the WDFW Wind Power Guidelines was insufficient, and that baseline monitoring of existing avian populations should have been performed for a minimum of two years prior to construction of the Project. The commenters also indicated that other baseline monitoring, including nighttime migration studies, should have been performed.

43. The Council has given consideration to these issues, comments and requests. On the issue of avian morality, the Council finds that the Applicant conducted baseline monitoring and avian mortality analyses in conformance with WDFW's Wind Power Guidelines. The Applicant coordinated extensively with WDFW and EFSEC's WDFW contractor, and addressed all of their concerns. Based on the analyses performed by the Applicant, and the review of relevant data presented in the Draft and Final EIS, the Council concludes that there is no evidence indicating that the mortality rates estimated by the Applicant, or even significantly higher estimates would cause a significant adverse impact to existing bird populations in the Project area.

44. Implementation of a post-construction avian monitoring plan will be an important measure in assessing the accuracy of the mortality estimates. The plan would be used to quantify impacts to avian species and to assess the adequacy of mitigation measures implemented. The plan would include fatality monitoring involving standardized carcass searches, scavenger removal trials, searcher efficiency trials, and reporting of incidental fatalities by maintenance personnel and others, for a period of two years after the beginning of Project operation. The plan would also include a minimum of one breeding season's raptor nest survey of the study area (including a one mile buffer) to locate and monitoring active raptor nests potentially affected by the construction

and operation of the Project. The protocol for the fatality monitoring study will be similar to protocols used at the Vansycle Wind Plant in northeastern Oregon, the Stateline Wind Plant in Washington and Oregon, and the Wild Horse Wind Power Project in Kittitas County, Washington.

45. On the issue of baseline monitoring, the Council defers to the Department of Fish and Wildlife in establishing guidelines consistent with and reflecting the Department's expertise in this area. However, the proposed SCA requires a number of mitigation measures that ensure that if avian mortality is significantly higher than predicted, and at levels of biological concerns, appropriate measures can and shall be taken to assess and address the situation. The Council has included in the SCA the Applicant's proposal for formation of a Technical Advisory Committee (TAC); however, the Council also requires that the TAC make recommendations to EFSEC if it deems that additional studies or mitigation are warranted to address unexpected impacts. Furthermore, the TAC would operate under Rules of Procedure to allow the TAC to function properly and efficiently. The Council retains ultimate authority to implement recommendations made by the TAC. The Council also commits to taking steps it deems necessary to impose specific conditions or requirements on the Certificate Holder as a consequence of situations where significant adverse impacts occur.

46. *Big game.* Some displacement impacts to wintering big game may occur in the Project area, although significant amounts of human activity have already occurred within the Project area. Because disturbance levels will not greatly increase beyond what was observed pre-project, impacts are expected to be very low or non-existent. Construction impacts to wintering big game are expected to be low, given that most of the heavy construction such as road and foundation construction will occur outside the critical winter months.

47. Following completion of the Project, the disturbance levels from construction equipment and humans will diminish dramatically and the primary disturbances will be associated with operations and maintenance personnel, occasional vehicular traffic, and the presence of the turbines and other facilities. Since the construction effort would be similar for all scenarios, impacts on big game would be expected to be similar for all scenarios. (Ex 29 (WE-T); ASC Sec. 3.4.3; and DEIS Sec. 3.2)

48. *Bats.* The potential for bats to occur in the Project area is based on key habitat elements such as food sources, water, and roost sites. Potential roost structures such as trees are, in general, limited within the Project. Little is known about bat species distribution, but several species of bats could occur in the Project area based on the Washington GAP project and inventories conducted on the Hanford Site's Arid Lands Ecology Reserve located in Benton County to the south and east of the proposed KVWPP site.

49. Impacts on bats or bat habitat on the site are unlikely during construction. During operation of the Project, bats would be susceptible to collisions with wind turbine blades and towers. Bat research at other wind plants indicates that migratory bat species are at some risk of collision with wind turbine blades and towers, mostly during the fall migration season. It is likely that some bat fatalities would occur during operation of the Project. Most bat fatalities found at wind plants have been tree-dwelling bats, with hoary and silver-haired bats being the most prevalent fatalities. Both species may use the forested habitats near the Project site and may migrate through the Project. Some mortality of mostly migratory bats, especially hoary and silver-haired bats, is anticipated during operation of the Project.

50. Although potential future mortality of migratory bats is difficult to predict, an estimate can be calculated based on levels of mortality documented at other wind plants. Approximately 2 bat fatalities per turbine per year are anticipated, with most of the fatalities consisting of hoary and silver-haired bats. The significance of this impact is hard to predict since there is very little information available regarding bat populations. Studies do suggest that almost all of the mortality is observed during the fall migration and dispersal period. Furthermore, the hoary bat, which is expected to be one of the most common fatalities at this site, is one of the most widely distributed bats in North America. It should be noted that the fatality estimates may vary from the expected range based on many factors, including turbine size and other site specific and/or weather variables. Monitoring data will provide direct measures of the mortality levels.

51. The significance of impact to bats is hard to predict since there is very little information available regarding existing bat populations in the Project area. Hoary bat, which is expected to be the most common fatality, is one of the most widely distributed bats in North America. Preconstruction surveys to predict impacts on bats would have been relatively ineffective, because current state-of-the-art technology for studying bats does not appear to be highly effective for documenting migrant bat use of a site.

52. The Council finds that the mitigation measures implemented for protection of avian species will also protect bats. Implementation of a post-construction avian monitoring program and creation of a TAC will also allow identification of any unanticipated bat impacts. (Ex 29 (WE-T); ASC Sec. 3.4.3; and DEIS Sec. 3.2).

53. *Unique and protected species.* The Applicant generated a list of state and federally protected species that potentially occur within the Project area to assess the potential for impacts on these species. Species were identified based on the WDFW Species of Concern list, which includes state listed endangered, threatened, sensitive, and candidate species; and the USFWS, Central Washington Ecological Services Office list of Endangered, Threatened, Proposed, Candidate and Species of Concern for Kittitas County, and consultation with the USFWS. Based on the habitat attributes present on the Project site and the habitats with which these species are associated, only bald eagles have the potential to occur within the Project site. No threatened or endangered fish species are found on site, and no impacts to such species are expected from the Project. Although estimated to be small, there is some likelihood of bald eagle mortality during the life of the project. The Applicant, under section 10 of the ESA, is developing a Habitat Conservation Plan (HCP) to acquire an incidental take permit for possible take of bald eagles. Section 10 of the ESA provides a means for private (non-federal) entities to acquire a permit for incidental take of listed species due to an otherwise lawful activity (Ex 29 (WE-T); ASC Sec. 3.4.3; and DEIS Sec. 3.2). A draft plan has been submitted to USFWS. USWFS has indicated that it does do not have the staff available for processing and that the HCP is a low priority. Part of the reason is that bald eagles have been proposed for delisting and staff is overextended and hasn't been able to devote time to review the Applicant's proposed HCP. (Testimony of Wally Erickson, Transcript of the EFSEC Hearings, p 863).

54. The Council finds that the studies and mitigation measures implemented by the Applicant to protect habitat, wildlife and unique and protected species as described above, are consistent with the WDFW Wind Power Guidelines and provide adequate protection to the resources. (Ex.71-R (TC-T) and Ex. 71-Sup (TC-Sup T)).

Noise

55. The Project will be designed to meet applicable Washington State Environmental Noise Levels, Chapter 173-60 WAC. Kittitas County does not have noise ordinances requiring control beyond state Noise Levels.

56. Because of the remoteness of the Project area, noise resulting from construction of facilities on the Project site is not expected to have adverse impacts on residences. Furthermore, the Applicant has committed to implement work-hour controls to limit noisy activities and blasting to daylight hours only.

57. Noise generated by construction of the Project is expected to vary, depending on the construction phases. All noise-generating construction activities will be conducted between the hours of 7 a.m. and 10 p.m. and are therefore exempt from the limits presented in WAC 173-60-050. Blasting is anticipated for the foundations and potentially some road areas. Blasting will be conducted only between the hours of 7 a.m. and 10 p.m. and is anticipated to occur over a period of approximately eight weeks. Blasting activities are specifically exempted from the noise regulations (per WAC 173-60-050 (1)(c)). (ASC Sec 4.1.1.4.1).

58. The Applicant has extensively modeled the noise impacts from turbine operation using industry standard models and procedures. The Applicant has assumed conservative noise emission values for the type of equipment being considered.

59. The Washington Department of Ecology has established limits for environmental noise in Washington Administrative Code (WAC) 173-60-040. The limit at residential receptors

(environmental designation for noise abatement, or EDNA, Class A) for noise generated by from an industrial facility (EDNA C) is 60 dBA during the daytime and 50 dBA during the nighttime. Based on the modeling the Project will comply with these limits. The estimated maximum project noise level at a Class A receptor of 49 dBA complies with the WAC limits. (Ex.25 Sup (MB-T Sup) p 3).

60. Audible noise from the feeder lines, substation transformers and high-voltage switching equipment would comply with levels specified in WAC 173-60-040s. (ASC Clarification, Sec 4.1.1).

Geological Resources and Hazards

61. Volcanic activity in the region is well known. However, the most direct risk to the site is from ash fallout, which was experienced most recently at significant levels in 1980. Further, the risk of earthquake is low at this site. Nevertheless, all Project buildings, structures, and associated systems will be designed and constructed consistent with requirements including seismic standards of the Uniform Building Code (UBC) or the International Building Code (IBC), but no less stringent than those found in the Uniform Building Code of 1997. Application of these codes in the Project design will provide adequate protection for the Project facilities and ensure protection measures for human safety.

62. Local soils are potentially vulnerable to runoff, depending on the slope. The Project will be issued a stormwater construction permit and required to follow a detailed Stormwater Pollution Prevention Plan (SWPPP) with appropriate BMPs to reduce such impacts. Site-specific BMPs will be implemented on steep slopes (21 to 30 degrees) to reduce erosion and prevent landslides during cut and fill activities.

63. An NPDES general permit will be required for construction activities. All construction disturbances will be stabilized and habitat restored, reducing the risk of any further erosion during operation of the Project. Operational SWPPP with BMPs to include landscaping, grass, and other vegetative covers will minimize ongoing erosion and sedimentation.

64. After implementation of all proposed mitigation measures, there will be no significant unavoidable adverse impacts to geological resources. (ASC Sec. 2.15).

Traffic and Transportation

65. Construction of the Project will result in significant traffic to and from the Project site during the several months of peak construction activities. These temporary increases in traffic would consist of construction truck deliveries of Project equipment and materials and construction workers commuting to the site. Possible access routes to the site were identified, based on their functional classification and capacity, in anticipation of large vehicles being used during construction. Peak hour traffic volumes associated with the peak construction period were determined. It is anticipated 160 worker vehicles, 20 light duty delivery-type vehicles, and 149 construction vehicles carrying materials and equipment are required for construction, which resulted in 329 additional construction vehicles during the peak hour. These construction volumes were analyzed with the volume of background growth to identify impacts to the surrounding roadway network during the peak of construction. Impacts during the life of the Project were also determined, based on anticipated volumes generated by the Project once in operation.

66. The roadway segment of US 97 (within 5 miles north of I-90) was identified as experiencing some degradation in traffic operations during the peak of construction. The effect

was considered reasonable because the peak of construction would be temporary, and the level of service of this roadway segment would return to its original status once construction is completed. No areas of concern during the operation period of the Project were identified

67. Vehicle parking will occur at the O&M facility and along access roads to the turbine strings.

68. The Applicant will prepare and follow a Traffic Management Plan approved by EFSEC to minimize construction traffic impacts. Landowners adjacent to transportation routes will be notified prior to construction activities. Warning signage and flaggers will be employed as necessary to minimize the risk of accidents when large equipment is entering or exiting a public road. Pavement conditions will be documented before construction begins, allowing EFSEC to monitor any road deterioration associated with the Project. The Applicant will repair any such road damage. Workers will be encouraged to carpool, further reducing the number of trips.

69. No significant increase in traffic is expected to occur during the operational phase of the Project. No more than 18 full-time workers are expected to staff the Project. (Ex. 33 (JA-T)).

70. The Washington State Department of Transportation has reviewed and approved the accesses to the Project. (Addendum to the DEIS, p 3-28).

71. The Applicant has agreed to the following further mitigation responding to local County concerns:

Project Access Roads. Access to the various rows of turbines will be achieved via graveled access roads branching from state highways 10 and 97 and County roads Bettas and Hayward Roads.

Access roads from state highways 10 and 97 shall be constructed with slope and culverts designed according to WSDOT and Washington state access management standards under Title 468 WAC and Chapter 47.50 RCW. Access from County roads shall be constructed with the appropriate slopes and culverts in accordance with Kittitas County standards. Project site roads shall be designed in accordance with Table 12-1 of the Kittitas County Road Standards for Private Roads with Low Density Traffic. In locations where road grades exceed the County 12% maximum road grade, the roads shall be designed to ensure that fire vehicles can gain access to the site as necessary to provide emergency services.

County roads, including shoulder pavement, shall be video monitored before and after construction of the Project to identify road degradation. Bettas Road that will be used for Project construction and operations (approximately 1.4 miles from state highway 97 to Hayward Hill Road) will be improved, following construction, to the current Kittitas County road standards applicable to this section of road.

The portion of Hayward Hill Road that will be used for Project construction and operations (approximately 1.4 miles) will be improved, to a 22-foot gravel road, from Bettas Road to the access road to turbine string row B. If construction of the Project results in the degradation of the existing pavement and/or shoulders on the County roads other than

Bettas and Hayward Hill Roads, Applicant shall reinstate these roads to as near the condition they were in prior to construction.

Applicant will construct a visitor's kiosk and public viewing area near the proposed O&M facility off Bettas Road with adequate signage directing the public to a safe parking lot to view and learn about the Project.

Applicant shall monitor traffic levels following completion of construction of the Project for a period of three years. After that time, Applicant shall continue monitoring of tourist and operations traffic to the Project upon written request from the EFSEC. Should tourist and operations related traffic to and from the Project site exceed WSDOT warrants, as contained in Chapter 910 of the WSDOT Design Manual, the Applicant shall construct right and/or left turn lanes on SR 97. Said improvements shall be designed and constructed in accordance with WSDOT guidelines.

Project Site Access. Project access roads run across both private and public (WDNR) lands. In order to avoid and minimize potential impacts to recreation on public lands, the Applicant will implement an adaptive management approach to allow access to and through the Project Area to access public lands for recreational purposes. Adaptive management allows for changes over time to the level of control and types of activities on the Project site, as needed. In general, the Applicant will permit controlled access to and through the site to public lands, as long it does not interfere with or introduce adverse impacts on Project operations or personnel. At a minimum, Project site access during operation shall be allowed as follows:

- Private property owners who wish to access their property from Project Access Roads will be allowed to do so as necessary under a formal access license and a key to a gated entrance
- Officials of the Washington State Departments of Natural Resources are currently allowed to access the Project site and will continue to be allowed access by key.
- The Applicant will allow others to access the Project site on a case-by-case basis. Active recreation activities such as camping and off-road vehicle usage will not be allowed on the Project site in order to avoid and minimize potential impacts to habitat and wildlife from such activities.

72. The FAA has reviewed plans for the proposed project to determine if it has the potential to interfere with local air traffic operations and issued "Determinations of No Hazard to Air Navigation". The FAA issued separate no hazard determinations for each proposed wind power and meteorological tower using two types of determinations: one type concluded that the tower would not require lighting, the second type concluded that it did. FAA Determination of Non Hazard certificates, which were approved on June 10, 2004 for the Project, confirm that the Project does not interfere with any of the current IFR flight approaches for Kittitas County's Bowers Field Airport at Ellensburg. Due to the bulk of the additional certificates, Applicant shall provide Determination of Non Hazard certificates issued by the Federal Aviation Administration (FAA) and related information to the Council, which demonstrate that the Project will not impact approved flight approaches, flight communications, or operations at Bowers Field Airport prior to construction.

73 The Council finds that the Applicant's proposed mitigation measures will appropriately mitigate construction traffic and air navigation impacts.

Cultural and Archeological Resources

74. A cultural resources evaluation was implemented to identify and assess any potential impact on cultural resources located within the KVWPP project area. These resources include previously recorded or yet undocumented historic, cultural and archaeological resources as well as traditional cultural properties. RCW 27.53.060 provides for protection of cultural resources on private and public lands in the state of Washington.

75. The Applicant consulted with and cooperated with the Yakama Nation. On October 14, 2002, the Applicant's cultural resource consultants Lithic Analysts contacted, by letter, Johnson Meninick, Cultural Resources Director of the Yakama Nation, to inform him of the archaeological survey work to be conducted on the KVWPP. Prior to this letter, the Applicant contacted Mr. Meninick by telephone and certified mail inviting Yakama Nation's participation in the cultural resources survey. A response from Mr. Meninick was not received. In addition, David Powell, Ceded Lands Archaeologist for the Yakama Nation, was also contacted by telephone to inform him of the archaeological survey work to be conducted on the KVWPP. Mr. Powell was invited to visit the Project area during the archaeological survey; he declined. Copies of the completed archaeological survey report were forwarded to Mr. Meninick and Mr. Powell in January 2003 for their review and comment. Mr. Powell verbally thanked the Applicant for sending the report to him, but did not respond otherwise.

76. To determine if the Project area contains any significant cultural deposits, an extensive and systematic on-ground cultural resource survey of the proposed KVWPP project area was conducted. In addition, an archival file and literature research was conducted of all documentation relevant to the project area. A summary of the documentation relevant to the archaeology, prehistory and history of the general area is included in the Application for Site Certification. The pedestrian survey was conducted in October 2002. The proposed wind turbine generator strings were surveyed by 30 meter meandering pedestrian transects. All locations of proposed access roads, underground electrical lines, and overhead electrical lines were investigated by 10 meter meandering pedestrian transects. The areas proposed for the project substations were surveyed by 10 meter meandering transects also. All open areas (i.e., roads, rodent burrow back dirt piles, cut banks, arroyos, ditches, etc.) within the pedestrian transects were examined for artifacts.

77. The survey identified two previously unrecorded prehistoric archaeological sites, both of which are lithic scatters. Both sites will be avoided during all phases of construction to prevent damage. The proposed project area was also surveyed to locate any historic buildings or other resources over 50 years of age. The archival and literature search included a search for historic resources. No historic resources over 50 years of age were noted within the Project area. The North Branch Canal (NRHP eligible) is located just outside the Project area. The North Branch Canal will be avoided by the Project and will not be affected by the Project. The study results of the survey are included in the Application for Site Certification. (Ex. 28 (JF-T; Addendum to DEIS)).

78. The Council finds that with implementation of these mitigation measures no impacts on known culturally sensitive areas would occur under any of the proposed scenarios. Operation of

the Project would not impact any of the archaeological or historical sites identified during this current cultural resource survey.

Visual Resources

79. The Applicant hired qualified experts to carry out an extensive visual and aesthetic impact analysis which was based primarily on the widely accepted Federal Highway Administration methodology for determining visual resource change and assessing viewer response to that change. The Applicant's expert used the photomontage module of the WindPro software program to create "before and after" visual simulation images to show the proposed Project from six simulation viewpoints (SVs) selected to be representative of views toward the Project from a range of locations, superimposing computer-rendered three-dimensional wind turbines on photographs of existing conditions. Levels of visual impact were classified as high, moderate, and low. The Applicant's analysis and the Council's DEIS found that the overall visual impact of the Project would be low to moderate.

80. In the fall of 2005 the Applicant carried out an additional visual and aesthetic impact analysis of the reconfigured Project using the same method of analysis and techniques described in the original Opening Statement. The analysis of the revised Project layout, with a reduced number of turbines which was included in the Addendum to the DEIS, included most of the viewpoints evaluated in the original Project DEIS. The analysis concluded that the Project's reconfigured layout reduced the impacts at many of these view points from "substantial" to "moderate". When given an opportunity to provide comments to the DEIS Addendum, Kittitas County's "SEPA official" did not provide written or verbal comments taking issue with EFSEC methodology of

analysis or determination. (See transcript of the EFSEC February 2, 2006 Supplemental DEIS Public Meeting, at pages 4 and 5).

81. In early June 2006, Kittitas County made its final decision regarding County approval of the Kittitas Valley Wind Power Project. Generally the County concurred with the analysis and conclusions that the project will not have significant adverse visual impacts. (April 12, 2006 Hearing Transcript, p. 24-26) However the County disagreed with this analysis regarding aesthetic impacts to nonparticipating residences within 2,500 feet of turbines. This issue was raised toward the end of the County's land use consistency process. The County did not raise this issue during the environmental review process.

82. The County's analysis was not based on the use of accepted visual assessment protocols that are commonly used by state and federal agencies. The County misconstrued the treatment of the issue of visual sensitivity as it was presented in the original visual assessment in the ASC, and as it was repeated in the DEIS and Addendum thereto. As a part of the process of assessing the aesthetic impacts of potential change to the landscape, as detailed in the DEIS and the Addendum as well as in testimony, the standard professional approach is to document the existing visual character and quality of the landscape and its sensitivity to potential visual change. Sensitivity to visual change is usually evaluated in terms of the numbers and types of viewers in the area. Residential and certain kinds of recreational viewers are usually assumed to be the most potentially sensitive to visual alterations of the landscape. In the case of this Project, a high degree of sensitivity was assigned to residences located within the foreground zone (up to ½ mile) of the proposed turbines. Visual sensitivity is not the same as visual impact, but instead is only one of the considerations that go into the final determination of impact. In determining potential impacts of

proposed projects, professionally accepted assessment techniques take into account a range of factors, including the degree of visibility of the new feature, the degree and nature of the visual change created, the effects on the visual character and quality of the view, and the sensitivity of the viewers. The County was incorrect to assume that the level of viewer sensitivity translated directly to the level of visual impact. (Ex.34 Sup (TP-Sup) pp 4-5).

83. The County mischaracterized aesthetic analyses used in the EIS process. The County took the findings that those analyses described as "moderate to high" and has misrepresented those findings as findings of "high" impacts. The County then asserted that a "high" impact is a "significant adverse environmental impact." This assertion was made without detailed analysis or any reference to the criteria used to establish the significance of impacts under SEPA. The County's assertion is not based on the analysis of the EFSEC DEIS, the Supplemental DEIS and the Addendum thereto. (Ex.34 Sup (TP-Sup) pp 5-6). The County further criticized the Applicant and EFSEC's DEIS and DEIS Addendum for not preparing visual simulations from every residence near the Project. Not only is such analysis is not routine or generally considered acceptable, the County's SEPA official did not provide this comment or critique to EFSEC during the EIS comment period. Further, while alleging that the visual simulation methodology was superior in the County's EIS for the enXco Desert Claim project, in cross examination, the County's SEPA official (Darryl Piercy) admitted that the County itself did not require or prepare such visual simulations for the Desert Claim project. (EFSEC Tr., p. 509).

84. Because of its confusion between level of viewer sensitivity and level of visual impact, the County concluded that all turbines must be set back 2,500 feet from residences

85. The Applicant believed its prior analysis and that of the DEIS and Addendum thereto, about which the County made no comment, were adequate. This was primarily because of the rural nature of the area and the small numbers of residences in proximity to the project, especially in light of the terrain, which restricts the views of the proposed turbines from many locations. However, in response to the County's 2,500 foot setback from non-participating residences raised at the end of their process and used to deny the project, the Applicant made a thorough investigation of the residences located within 2,500 feet of proposed turbines. This investigation included a close review of maps created using a geographic information system (GIS), and both on-the-ground and helicopter-based field reconnaissance. This study was based on a 410-foot maximum turbine tip height used in the DEIS. (Ex.34 Sup (TP-Sup) p 6).

86. By insisting, without an objective basis, that all turbines be set back 2,500 feet from houses to mitigate for a perceived "looming" visual impact, the County placed arbitrary restrictions on turbines sited in areas where they would have relatively little impact on residential views. The effect on the views to houses with turbines within 2,500 feet was not as stated by the County. Instead of the 20-plus houses the County assumed to be affected and within a half-mile from proposed turbines (*see* County Resolution No. 2006-90, Finding No. 20; May 3, 2006 County Hearing, TR p. 10, line 24) only 16 homes are within 2,500 feet of proposed turbines. (Ex. 34 CUP (TP-T-SUP), p. 19). Eleven residences would actually have other than an insignificant view at the most, due to topography and screening. Of these eleven houses, the primary viewshed of all but one is not towards the turbines within 2,500 feet. Further, as stated in both the technical analysis and related testimony presented by the Applicant, the view of the turbines ceases to dominate ("loom") at a distance from the observer of about four times the height of the structure. The degree to which visual impacts are adverse significantly depends on the viewer's location and

sensitivity and the impact on view quality. Because of the fact that the primary viewsheds of houses that can actually see the turbines within 2,500 feet are overwhelmingly away from or not directly towards the turbines and because most of the turbines are located in "Zone 3", as described in Dr. Priestley's supplemental testimony (Ex. 34 SUP (TP-T SUP) pp 8), the impacts using a 1320 foot visual setback on this project are less than significant. For projects like the Kittitas Valley Wind Power Project, whose siting and design have shaped and minimized its overall visual impacts, any visual impact that might be identified as affecting small numbers of viewers must be evaluated in the context of the fact, that on the whole, the Project's visual impacts are relatively low. (Ex. 34 Sup (TP-Sup) pp 6-11).

87. The Applicant's analysis and the DEIS and Addendum thereto concluded that the visual impact of the Project would not constitute significant impacts because of the low to moderate levels of sensitivity of the affected views. Moreover, as the SEPA lead agency, it is appropriate and necessary for EFSEC to balance the moderate impact to a handful of residences against the overwhelming public benefit of the Kittitas Valley Wind Power Project.

88. Regarding potential impacts from light and glare, neither glare nor "shadow flicker" pose hazards with this Project (see below). Further, the turbine towers will not add significant ambient light to their immediate surroundings; however, similar to the Wild Horse Wind Power Project , approximately 18 turbines will be marked with flashing warning lights required by the Federal Aviation Administration to alert aircraft to their presence.

Health and Safety

89. The primary health and safety risks associated with the construction of the Project fall into three categories: fire risks; risks associated with the release of hazardous materials; and risks specifically associated with the operation of a wind generation facility.

90. *Fire.* The risk of fire is the primary health and safety concern associated with the proposed Project, regardless of which development scenario would be implemented. There is currently no fire protection service in much of the project area.

91. Because the Project site is generally arid rangeland with a predominant groundcover of grasses and sagebrush, the greatest risk of fire would be during the hot, dry summer season. Once started, a range fire could spread rapidly. Nearby residences, miles from the site, could be impacted by a wildfire.

92. The same causes of fires would exist during operation of the Project; however, risks associated with human activity on the site would be reduced in comparison with the construction phase. Even though the Project site is in an area of relatively low lightning flash density, because of the nature of the terrain and area vegetation, the occurrence of lightning strikes may increase due to the presence of proposed Project structures. The wind turbine generators and substation would include lightning protection systems. Fires could also occur in the turbines and the Project's electrical equipment as a result of equipment malfunction, lightning strike, electrical short, terrorism, sabotage, vandalism, or aircraft impact. Sensors installed in the turbines and substation transformers would detect conditions related to a fire and send an alarm signal to the

central Supervisory Control and Data Acquisition (SCADA) system, which would notify Project operators of the situation.

93. In addition to the monitoring systems described above, the wind turbines for the proposed Project would meet international engineering design and manufacturing safety standards including the International Electrotechnical Commission standard 61400-1: Wind Turbine Generator Systems–Part I: Safety Requirements. Project facilities would be lighted in accordance with FAA regulations to minimize the potential for a low-flying aircraft to collide with a structure.

94. The Applicant proposes to implement a comprehensive series of measures to prevent fires during construction of the Project, including but not limited to equipping vehicles with fire extinguishers, installing fire boxes with fire fighting supplies at various locations; and maintaining a minimum of one water truck with sprayers on each turbine string road during construction activities during fire season; and using high clearance off-road vehicles.

95. The Applicant will be required to prepare a fire control plan in coordination with local and state agencies and response organizations. The Applicant has also entered into an agreement with Kittitas County Fire District No. 1 for fire protection services. The SCA requires that this agreement be maintained through the life of the Project. (ASC Sec. 4.1.2, 5.3.2.2 and 2.3.6).

96. *Release of hazardous materials.* Construction and operation of the Project would require the use of hazardous materials such as diesel and gasoline fuels for operating construction equipment and vehicles; lubricating oils; transformer mineral oils; and cooling, lubricating and

hydraulic fluids used in the turbines. The Applicant has proposed various supply and storage mechanisms depending on the type of fluid being handled.

97. The Applicant has proposed mitigation measures to prevent or control the occurrence of spills on site during construction and operation of the Project, including appropriate handling and storage facilities for the fluids of concern, and facility design to include sensors for fluid leaks as appropriate. In addition, the Applicant will be required to develop a Spill Prevention Control and Countermeasures (SPCC) Plan for both construction and operation phases of the Project. SPCC plans are required by regulation to be reviewed and updated, as appropriate, at a minimum every 2 years. (ASC Sec.4.1.3).

98. *Hazards specifically associated with wind generation facilities.* Several health and safety hazards specific to wind generation facilities have been raised by members of the pubic: ice and blade fragment throw from the turbine blades; turbine tower collapse; turbine blade throw; and shadow flicker.

99. Ice can form on wind turbine towers and rotor blades. The Applicant has estimated that icing conditions could occur on an average of 3 to 5 days per year and that the distance of the maximum ice throw, if it were to occur, would be 328 feet. The ice throw hazard area would extend perpendicular to the wind direction and downwind from the turbine. The ice throw hazard area would extend about 80 feet upwind of the turbine. Blade fragment throw risk would be similar to that for ice throw. Blade fragment throw would most likely be the result of terrorism, sabotage, vandalism, or a lightning strike. The hazard zone for blade fragment throw should be approximately that for ice throw. (ASC Clarification p 24 and 25).

100. Because of the significant distances from the proposed tower locations to existing residences and public roads, and restricted site access, the proposed Project should not result in any risk to the public due to ice or blade fragment throw. The Applicant has agreed to implement safety setbacks of 541 feet for each of the turbine towers from residences and tip height from public roads and PSE and BPA transmission lines. (Ex. 20 Sup (CT-Sup) p 28).

101. The Council heard testimony that incidences of tubular tower collapse are very rare, with only two incidences recorded, one due to an over-speed condition and the other resulting from a weak weld in the tower flange. Restricted site access combined with the proposed setbacks to existing residences and public roads should result in minimal risk to the public in the extreme unlikely event that a turbine tower were to collapse.

102. Possible causes of a loss of a turbine blade are equipment failure, improper assembly, terrorism, sabotage, vandalism, or a lightning strike. Only one occurrence of loss of a turbine blade has been documented, where a blade was thrown 50 to 75 meters. The failure analysis determined that the blade to hub fastening system had failed due to a combined manufacturing and design defect. The Applicant estimated the worst-case blade throw distance to be approximately one turbine tip-height. Restricted site access combined with the proposed setbacks to existing residences and public roads should result in minimal risk to the public in the extremely unlikely event that a turbine blade were to be thrown. (Ex. 38 (MB-T); Ex. 39 (DK-T); and Ex. 37 (HKJ-T).

103. The probability of a wind turbine at the proposed project killing or seriously injuring a member of the public as a result of blade throw, tower collapse or ice throw is less than 1 in 1

billion. The potential public health and safety risks posed by this project are insignificant and less than the risks posed by other common energy generating technologies and countless other common activities. (Ex. 39 (DK-T) and Ex. 38 (MB-T)).

104. Shadow-flicker caused by a wind turbine is defined as alternating changes in light intensity when the moving turbine blades cast shadows on the ground or objects (including windows of residences). Shadow-flicker can occur in Project-area homes if a wind turbine is located near a home and is in a position where the blades interfere with very low-angle sunlight. The result can be a pulsating shadow in the rooms of the residence facing the wind turbine and subject to the shadow-flicker effect. Such a location is called a "shadow-flicker receptor." Visual obstacles (e.g., terrain, trees, or buildings) between the wind turbine and a shadow-flicker receptor can reduce or eliminate the shadow-flicker effect. Shadow-flicker frequency is related to the rotor speed and number of blades on the rotor. There are no documented human or animal health impacts associated with shadow flicker from wind turbines. (Ex. 40 (AN-T) p.4) (June 10, 2006, County Hearing Transcript p.103-104).

105. Due to the significant reductions in the number of wind turbines as well as the increase in setbacks from neighboring residences, the potential for shadow flicker impacts to neighbors has been dramatically reduced. A detailed report prepared by Arne Nielsen of Wind Engineers was prepared to analyze shadow flicker and was submitted to EFSEC and the County in October 2005. This analysis was a worst case analysis of all structures in the area. Because of the extreme assumptions, the actual impact will be considerably less. Further, as shown in the testimony of Dr. Tom Priestley, many of the houses within 2,500 feet of a turbine are significantly screened from turbine view and many of the houses that are not screened are oriented away from the turbine. Therefore, any actual effect will be

much less than as modeled. Based on this detailed analysis, the Applicant does not expect the non-participating residences to be significantly adversely impacted by shadow flicker. However, in the unlikely event that the modeling results are shown later to be inaccurate, and some residences are significantly adversely impacted by shadow flicker, the Applicant has continually stated that it is willing and able to avoid this potential impact by programming the "offending" turbines to shut down during those specific times that significant shadow flicker occurs. (Ex. 40-Sup (AN-Sup) and Ex. 34-Sup (TP –Sup)).

106. The Applicant stipulated that it will institute the turbine shut down measure to all existing residences of non participating landowners within 2,500 feet of a turbine that have a line of sight view (view of turbine not blocked by topography and/or vegetation) from the residence to that turbine, upon request of the non participating land owner.

107. Finally, health and safety and emergency plans for both the construction and operation phases would be prepared by the Applicant to protect public health and safety and the environment on and off the site in the case of a comprehensive list of major natural disasters or industrial accidents relating to or affecting the proposed Project. The Applicant would be responsible for implementing the plans in coordination with the local emergency response support organizations. The Project operating and maintenance group and all contractors would receive emergency response training as part of the regular safety-training program to ensure that effective and safe response actions would be taken to reduce and limit the impact of emergencies at the Project site. (ASC Sec 4.1 and 7.2).

Socioeconomics

108. Project construction will result in increased employment in Kittitas County. It is expected that 253 full and part time jobs, 126 of which are expected to be local jobs, will be created in Kittitas County as a result of construction of the Project.

109. Total direct income (personal income in the form of wages, profits, and other income received by workers and business owners, plus income from other sources such as royalty payments to land owners who lease land for the turbines) generated during the construction phase of the Project is estimated to be $5,814,500. This would be a temporary effect on the Kittitas County economy. (Ex. 80 Sup (SG-T-SUP)).

110. The Project's economic impacts are not expected to be limited to jobs. Additional indirect and induced impacts by the construction of the Project add another $4,335,600 to the regional economy. Thus, the total direct and indirect income resulting to the County during the construction phase is projected to be $10,150,100. *Id.*

111. The overall increase in economic activity from the wind power plant will increase tax revenues for Kittitas County. *Id.*

112. Based on the evaluation of the proposed wind power facility and a review of the levy rates in the 2005-2006 Kittitas County Assessor's Report, it has been estimated that new property tax revenues will equal approximately $1,508,325 in the first year of operation (this amount will gradually decrease as the turbines depreciate over time). For this calculation the complete wind farm project was valued at $190,000,000. For comparison, property tax revenues from all sources

in Kittitas County totaled $33,198,898 for the 2005-2006 budget year. The expected increase in property tax revenues due to the wind farm amounts to an increase of 5 percent over these levels. *Id.*

113. In addition, approximately 16 turbines are expected to be built on land managed by the Washington Department of Natural Resources (DNR). For these turbines, a rental fee for land will be paid to the State, which then returns these funds to schools throughout the state based on district need. For the first 10 years of the project, the annual rental rate is estimated to be $9,429 per turbine, amounting to an additional $150,864 annually for the DNR. These payments then increase and eventually reach an estimated $20,744 per turbine after 25 years, resulting in $331,904 in revenue to the DNR. (Ex. 80 Sup (SG-T SUP)).

114. Surveys show that local housing supplies are adequate to accommodate the Project's construction-related demand for temporary rental housing. Thus, no adverse impacts are expected with regard to regional or local housing supply. (SCA Sec 5.3.3; Ex. 32 (DP-T)).

115. The issue of the Project's potential effect on property values in the County was debated during the proceedings. Evidence in the record established that the rural location of the Kittitas Valley Project site is beyond the geographic area where any potential negative impacts to residential or agricultural property values might be experienced. Further, evidence was offered to show that property sales in developed and developing portions of the County remain robust and that property values have not been affected by the publicity related to either of the two other potential wind power projects in the area. The Kittitas County BOCC found that there was no evidence of a negative impact on property values. (April 12, Transcript pp 23). Therefore, the

Council believes that for this particular Application, the sum of the evidence clearly demonstrates that the Project will not have any significant negative affect on the property values in the County. (Ex. 36-T (PBT-T); Ex. 36 Sup (PBD Sup); Ex. 80 Sup (SG-T (SG-T Sup)).

Public Services

116. Construction of the Project will occur in an area that is susceptible to wildfires, especially during the hot, dry summer season. Risk of fires increases with the acreage of the Project site that is disturbed during construction, and the number of construction workers present on the site. To mitigate for this risk, the Applicant has entered into a Fire Services Agreement with Kittitas County Fire District #1 that will remain in effect for the life of the Project. As part of the Agreement, the Applicant will purchase the fire district a new fire truck (brush rig).

117. Temporary construction workers are not expected to move their families to the area during construction. Therefore, little additional demand on schools and police services is expected. Law enforcement activities would peak during the roughly 1 to 2 month period when on-site employee numbers are greatest.

118. Demand for emergency medical services could increase slightly due to construction accidents on-site or within the Project vicinity. However, the Kittitas Valley Community Hospital has capacity for additional patients, and there are several ambulances available to service the Project area. No significant adverse impacts to medical services in the Project area are expected during construction.

119. Increased use of local recreational facilities during Project construction may occur. Some workers may decide to stay at parks and campgrounds that allow overnight camping, and some displacement of existing recreational users may occur. However, there is an adequate supply of recreational lodging to accommodate this increased demand, and worker demand may favor weeknight use versus weekend use. No complaints have been identified from the Wild Horse construction causing such impacts.

120. Project operation is not expected to adversely impact fire response, law enforcement, school and medical services; any impacts on these services will be lower than during construction. Even so, the Applicant will maintain fire and emergency response plans developed during the construction phase of the Project, and will also continue coordination with local service providers.

121. The Applicant has verified through analysis and modeling that operation of the wind turbines will not significantly affect communication technologies in the Project area. All turbine locations and their infrastructure have been chosen to avoid impacts on existing communication paths in the area. Proposed turbine locations will not obstruct or interfere with any existing microwave telecommunication facilities, including those used by cellular telephone providers. Wind turbines do not interfere with cellular phone reception, and as a result there would be no obstruction from Project facilities or operations to cell phone service or the ability of cell phone users to contact emergency providers in the area using that means of communication. (Ex. 31 (LP-T)).

122. Finally, the Applicant commissioned an analysis of potential interference with television reception in the surrounding area. This study concluded that the Project would result in minimal to

no degradation of television reception. Further, the number of potentially affected residences is very small. (Ex. 31 (LP-T)).

123. As stated previously, water for of the Project will be obtained from authorized off-site sources. Given the small amount of water required for sanitary uses during operations, there will be no adverse impacts to water supply in the area.

124. The Project will not require connection to local sewer systems. All sanitary wastes will be collected and disposed of off-site during construction; during operation, sanitary wastes will be handled by an on-site septic system. Solid wastes generated during construction and operation will be disposed of at appropriate waste handling sites. The amounts of waste generated will be relatively small, and are not expected to cause adverse impacts to solid waste disposal sites or services.

125. The Applicant has committed to a number of mitigation including its agreement with Kittitas County Fire District #1. With these mitigation measures, no significant adverse impacts are anticipated for public services or recreational facilities. (SCA Sec 5.3; SCA Clarification Sec 5.3; Ex. 20 Sup (CT-Sup) pp-7).

Site Restoration

126. WAC 463-42-655, as in effect on the date of submittal of the Application, requires an Applicant to provide a plan for site restoration in sufficient detail to identify, evaluate, and resolve all anticipated major environmental, public health, and safety issues. The rule requires that this

plan address provisions for funding or bonding arrangements to meet the site restoration or management costs.

127. In its Application, the Applicant briefly outlined the scope of activities that would be undertaken at the end of the Project's useful life. These activities included removal of Project structures, removal of foundations to 3 feet below grade, and restoration of soil surfaces as close as reasonably possible to their original condition.

128. The Applicant has also agreed to the following

_____Decommissioning Plan. Prior to construction of the Project, Applicant shall provide to EFSEC a Project decommissioning and site restoration plan (the "Plan") as required under WAC 463-42-655, prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date hereof. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the Project site restoration or management costs. The Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Plan.

Decommissioning Scope and Timing. Applicant or any Transferee, as the case may be, shall commence decommissioning process of the Project within twelve (12) months of the date of termination of this Agreement.

Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; removal of overhead cables, re-grading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads, facilities, structures and/or power cables that Project Area landowners wish to retain); and final reseeding of disturbed lands (all of which shall comprise "Decommissioning"). Decommissioning shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

Decommissioning Funding and Surety. Except as provided below, Applicant or any Transferee, as the case may be, shall provide security sufficient for Decommissioning costs in the form of a performance bond, guaranty or a letter of credit to ensure the availability of funds for such costs (the "Decommissioning Security") to EFSEC. The Decommissioning Plan shall provide that the Decommissioning costs shall be reevaluated annually during construction of the Project and once every five (5) years thereafter from the date of Substantial Completion to ensure sufficient funds for Decommissioning and, if the parties agree at that time that the Decommissioning costs need to be modified, the amount of the Decommissioning Security shall be adjusted accordingly, based upon the original agreed upon Decommissioning Plan scope of work. The Applicant shall be required to provide such security within 30 business days of Substantial Completion. On or before the date on

which the Decommissioning Security must be established, the Applicant or any Transferee, as the case may be, shall provide, at its election, one of the following:

Performance Bond. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to the Decommissioning costs. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Applicant under this Agreement and under the Bond provisions.; or

Letter of Credit. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a letter of credit issued by a bank whose long-term debt is rated "A" or better by a Rating Service. The letter of credit shall be in an amount equal to the Decommissioning costs. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. The State of Washington, by and through EFSEC or its successor or designees, shall be authorized

under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the Applicant's or Transferee's (as the case may be) failure to perform its decommissioning obligations when due; or

Guaranty. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000

Financial Security and Utility Project Ownership. Applicant or any Transferee, as the case may be, shall provide the Decommissioning Security for the performance of its Decommissioning obligations arising hereunder unless if, at the time the duty to provide Decommissioning security arises as provided above, the owner of the Project is an investor-owned electric utility regulated by the FERC and the Washington Utilities and Transportation Commission (WUTC), in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.

129. The Council has considered the above commitments, and, finding them to be appropriate, has incorporated them into the Site Certification Agreement; *provided* the Applicant complies with EFSEC's site restoration regulations in effect at the time of Application submittal. The Applicant must provide an initial site restoration plan to the Council prior to construction of the Project, and a detailed site restoration plan must be approved by the Council prior to decommissioning at the end of the useful life of the Project. (SCA Sec. 7.1).

Cumulative Impacts

130. Potential impacts of the proposed Project were considered cumulatively with other potential development in the Project and surrounding areas. Two types of reasonably foreseeable development were identified: proposals for two other wind generation facilities to be located north of Ellensburg (Wild Horse Wind Power Project, which is under construction, and Desert Claim Wind Power Project), and additional economic and residential development within the County as a whole. It was determined that the construction of the Kittitas Valley Wind Power Project, in conjunction with other development considered, is not expected to result in significant adverse cumulative impacts for one or more of the following reasons: no significant adverse impacts were identified for each of the actions individually; impacts of the independent actions were localized to each project; the impacts of the actions are of a temporary nature; mitigation measures and requirements of county regulations reduce adverse impacts to non-significance; and the KVWPP does not contribute to cumulative impacts because of the distance that separates it from other actual and proposed wind power development in the County.

131. A single cumulative impact involving development of all three wind power projects was identified with respect to visual resources: the impact of repetitive views of turbines in the County

for residents and frequent visitors to the Valley could result in the impression of change in the overall visual character of the Kittitas Valley landscape. It does not appear that any mitigation measures are available to fully address this cumulative impact to visual resources. (Supplemental DEIS).

Term of the Site Certification Agreement

132. The Council finds that there is a benefit to the public to have permitted facilities ready to be constructed whenever it becomes known that more generation capacity is needed. Further, it is in the state's interest to provide abundant energy at reasonable cost. Nonetheless, the Council recognizes that an unlimited build window for a proposed project is *not* appropriate, as over time, mitigation measures presented in an application may no longer be protective of environmental standards and conditions at the time the facility is constructed.

Conformance with Law

133. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. RCW 80.50.010.

134. Consistent with legislative intent, the Council must consider whether an energy facility at a particular site will produce a net benefit after balancing the legislative directive to provide for abundant energy at a reasonable cost with the impact to the environment and the broad interests of

the public. Here, the Council finds that the Project conforms to the legislative intent expressed in RCW 80.50.010.

135. The Council considered the Applicant's Second Request for Preemption and finds that the Applicant has complied with all provisions and requirements of WAC 463-28 and that the Council has given due consideration to the local community interests and governmental interest affected by the project and shall provide for such in the SCA. Specifically the Council finds that to the extent they are in conflict with action herein, the local land use plans and ordinances of Kittitas County should be preempted by the Council pursuant to RCW 80.50.110 and WAC 463-28.

136. The Applicant proposes to construct the Project in accordance with applicable national and international building codes. Electrical and mechanical project components would comply with international design and construction standards. The Applicant proposes to implement a comprehensive employee safety plan during construction and operation of the Project. The Council therefore finds that operational safeguards will be at least as stringent as the criteria established by the federal government and will be technically sufficient for welfare and protection of the public. RCW 80.50.010 (1).

137. The Applicant has agreed to appropriate environmental mitigation requirements as indicated in the sections discussed above. As a whole, the mitigation package preserves and protects the quality of the environment. It is the policy of the state of Washington to support the development of wind energy facilities. See State Energy Policy, Guiding Principle #2, RCW 43.21F.015. This Project will produce electrical energy without generating greenhouse gas emissions. As a renewable energy resource, the Project will enhance the public's opportunity to

enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment. RCW 80.50.010 (2).

138. Finally, the evidence in the record supports the conclusion that the region needs to continue to add electrical generation capacity. As a renewable wind power generation facility, the Project will contribute to the diversification and reliability of the state's electrical generation capacity, and will therefore support legislative intent to provide abundant energy at a reasonable cost. Renewable wind power will assist the region and nation to reduce their dependency on fossil fuels.

4. CONCLUSION

1. The Council has carefully considered its statutory duties, applicable administrative rules, and all of the evidence in the record in exercising its duty to balance the state's need for energy at a reasonable cost with the need to protect the environment and the health and safety of the residents of the local area.

2. One of the Council's principal duties is to ensure that the location of energy facilities will produce minimal adverse effects on the environment. We have considered the testimony of expert witnesses and members of the public, legal arguments (briefing) of the parties, as well as the Draft and Final EIS in determining whether this Project, with its proposed mitigation measures,is appropriate for this location. As currently proposed, and with mitigation for a number of impacts and the conditions of the Site Certification Agreement, the Project would have a minimal impact on the environment. One of the Council's additional duties is to ensure that the supply of energy, at a reasonable cost, is sufficient to ensure people's health and economic welfare. The record

shows that this Project would serve those goals. The Council considered whether the total package of mitigation measures sufficiently offsets the environmental impacts of the Project. Viewed on balance, with respect to this Project, and in the context of the mitigation measures proposed, the package offered by Applicant comports with the legislative policy of Chapter 80.50 RCW– Finally, the Council considered the Applicant's reasonable, good faith efforts to seek consistency with Kittitas County's Comprehensive Plan and zoning ordinances, as well as the Applicant's measures to comply with WAC 463-28-040.

3. For all of the reasons discussed in the body of this Order, the Council recommends to the Governor that this Project be APPROVED for site certification.

5. FINDINGS OF FACT

Having discussed in detail above the facts relating to the material matters, as well as certain conclusions, the Council now makes the following Findings of Facts, Conclusions of Law and states its Decision. Any Findings of Fact which are found to be Conclusions of Law will be considered as such.

Nature of the Proceeding

1. This matter involves Application No. 2003-01 to the Washington State Energy Facility Site Evaluation Council (EFSEC or Council) for certification to construct and operate the Kittitas Valley Wind Power Project (Project), a wind powered energy generation facility with a maximum of 65 wind turbines and nameplate capacity of approximately megawatts 100-180 (MW). The Project is to be located in a rural area of Kittitas County, Washington.

The Applicant and the Application

2. The Applicant, Sagebrush Power Partners, is a Delaware Limited Liability Company (LLC) formed to develop, permit, finance, construct, own and operate the Project. Sagebrush Power Partners LLC is owned by one or more "parent" companies which are considered to be Site Certificate Holders, as defined in the Site Certificate.

3. On January 13, 2003, the Applicant submitted an Application for Site Certification to the Council seeking certification, pursuant to RCW 80.50.060, to construct and operate the Kittitas Valley Wind Power Project in Kittitas County, Washington. The Project is a wind powered electrical generation facility, with a generation capacity of approximately 100-180 MW.

Compliance with the State Environmental Policy Act (SEPA)

4. EFSEC is the lead agency for environmental review under the State Environmental Policy Act, Chapter 43.21C RCW. The Council Manager is the SEPA responsible official. WAC 463-47-051.

5, On February 14, 2003, the Council issued a Determination of Significance and request for comments on the scope of environmental impacts. On March 12, 2003, the Council held a hearing on the scope of the Environmental Impact Statement (EIS) in Ellensburg, Washington. The deadline for written comments on the scope of the EIS was March 14, 2003.

6. On December 12, 2003, the Council issued a Draft EIS prepared by an independent consultant. The Council held a public hearing to accept oral comment on the Draft EIS on January 13, 2004, in Ellensburg, Washington. The Council heard oral comments from _____

members of the public. The Council accepted written comments through January 24, 2004 (postmark deadline); the Council received _____ written comment letters. The Council issued a Draft Supplemental DEIS on August 11, 2004. The Council held a public hearing on the Supplemental DEIS on August 25, 2005 and heard oral comments from _____ members of the public. The Council accepted written comments through September 11, 2004 and received _____ _____ written comments. On January 20, 2003 the Council reopened for comments on the Supplemental DEIS and held a public hearing to receive additional comments on February 2, 2006, receiving ____ oral comments. It allowed written comments on the reopened comment period until February 1, 2006, receiving ___ written comments. As a result of the reduction of scope of the project the Council issued an Addendum to the DEIS on December 23, 2005. A Final EIS was adopted and issued by the Council on_____, 2006.

7. On _____, the Council issued the Final EIS for the Project.

The Adjudicative Proceeding

8. On May 16, 2203 the Council duly published notices of receipt of the Application, public meetings, commencement of the Adjudicative Proceeding and opportunity to file petitions for intervention, prehearing conferences, land use hearings, and the adjudicative hearings regarding Application No. 2003-01.

9. Prior to formal adjudicative hearings on the Application, the Council duly noticed, and conducted prehearing conferences on June 26, 2003, January 13, 2004, February 19, 2004, July 19, 2004, August 2, 2004, August 10, 2004, September 22, 2004, August 22, 2005, March 3, 2006,

April 24, 2006 May 30, 2006, June 13, 2006, July 12, 2006, and August 17, 2006. The Council issued Prehearing Orders Numbers 1 through 26.

10. Statutory parties to the EFSEC adjudicative hearings include the Applicant and the Counsel for the Environment. The Washington State Department of Community, Trade and Economic Development (CTED) filed a Notice of Intervention in the matter; CTED is entitled to intervene under Council rules, therefore, the Council granted party status. WAC 463-30-050. Upon petitions being filed, the Council also granted party status to the Economic Development Group of Kittitas County (EDG), Renewable Northwest Project, Sierra Club (Cascade Chapter), Residents Opposed to Kittitas Turbines and Mr. F. Steven Lathrop. Chris Hall was also accorded intervener status, but later withdrew as an intervener, pursuant to a letter dated May 25, 2006.

11. The Council held formal adjudicative hearings regarding Application 2003-01 on September 18 through September 21, 2006, in Ellensburg, Washington.

12. The Council held public hearings on September 12, 2006 in Seattle, Washington, and September 20 and 21, 2006 in Ellensburg, Washington.

13. The Applicant and other remaining parties to the case were given an opportunity to submit Proposed Findings of Fact, Conclusions of Law, and Order and Proposed Site Certification Agreement.

14. On _____, the Council voted to recommend approval of the Project to the Governor of the state of Washington.

The Land Use Consistency Process

15. The Council is required to hold a public hearing to determine whether a proposed Project's use of a site is consistent with local or regional land use plans as well as zoning ordinances in effect at the time the Application was submitted to the Council. WAC 463-14-030. A land use consistency hearing was conducted on May 1, 2003, in Ellensburg, Washington. Both the Applicant and Kittitas County testified that the Project was inconsistent with Kittitas County land use plans and zoning ordinances, although the "inconsistency" relates to Kittitas County's Wind Farm Overlay Ordinance, KCC chapter 17.61A rendering all wind farms a prohibited use until the Board of County Commissioners approves a subarea plan amendment to the County's Comprehensive Plan, a rezone, approval of development agreement, and issuance of a wind farm permit. The Project is not considered "inconsistent" with the County's Comprehensive Plan policies or the general statements of intent in the zoning code. Based upon this inconsistency, the Council found the Project to be inconsistent with Kittitas County land use plans and zoning ordinances, and issued Council Order No. 776 to that effect. Pursuant to WAC 463-28-030(1) the Council directed the Applicant to make all reasonable efforts with Kittitas County to resolve the existing land use inconsistencies in the Project Application.

16. Council Order 776 gave the Applicant 90 days from May 1, 2003, to resolve the inconsistencies, ask for preemption of local land use ordinances, or request an extension of the time period for requesting preemption pursuant to WAC 463-28-040. Recognizing the EFSEC requirement that the Applicant make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve noncompliance, the Applicant filed its first County application pursuant to KCC 17.61A, on March 27, 2003 ("First Application"). The Applicant then commenced protracted efforts to seek a

County hearing At the May 12, 2003 EFSEC meeting, the Applicant requested and received an extension of the time for filing a preemption request until September 1, 2003. Later EFSEC extended the time to January 15, 2004 and subsequently to February 12, 2004. The record before EFSEC shows that the County refused to provide a timeline to process the application, and determined that as part of the County process, the County would itself make a determination of the adequacy of EFSEC's EIS prior to considering the local permit application. The Applicant filed a request for preemption with EFSEC pursuant to WAC 463-28-040 on February 9, 2004 and, withdrew the First Application.

17. In September 2004 the Applicant and Kittitas County requested the Council to continue the adjudicative hearing which had been set to commence on September 27, 2004, indefinitely, to allow a more expedited processing of the Wild Horse Wind Power Project, Application 2004-1. In the summer of 2005 the Applicant decided to revise the project size and configuration of the KV Project and to file a new application with the County, in hope of obtaining land use consistency. The Applicant approached both the County and EFSEC on this matter and it was agreed to suspend the EFSEC process pending the new application with the County. Both the County and EFSEC requested the Applicant to withdraw its request for preemption pending the outcome of the new County application. The Applicant withdrew its request for preemption on October 19, 2005.

18. The Applicant made a second attempt to achieve local land use consistency, and filed a Development Activities Application pursuant to KCC 17.61A with the County dated September 30, 2005 and submitted a revised Development Activities Application on County-required application forms, dated October 14, 2005. The County deemed the application complete on October 17, 2005.

19. Under the County's process, the County purported to hold a single public hearing before both the Planning Commission and the BOCC, commencing on January 10, 2006, and continued in a serial fashion through numerous public meetings, ending on June 6, 2006. The Applicant submitted proposed findings of fact and conclusions of law demonstrating that the Project is consistent with applicable County comprehensive plan policies, the statements within the applicable zoning codes regarding the uses that are preferred and discouraged within applicable zoning districts, and meets criteria for approval under applicable County zoning ordinances. The Applicant presented written and live testimony from expert witnesses regarding visual impacts, shadow flicker effects, property values, health and safety, noise and wildlife impacts. The Applicant submitted a preliminary draft proposed development agreement, modeled on the County-approved Wild Horse wind energy facility development agreement, anticipating negotiation and discussion of the development agreement with County staff, aimed at refining the agreement during the approval process.

20. Following hearings on January 10, January 11 and January 12, 2006, the Planning Commission held a deliberation on January 30, 2006 and issued a recommendation and findings of fact on February 13, 2006, recommending denial of the application. The BOCC conducted "continued" hearings on March 29 and 30, 2006 with additional deliberations on April 12 and April 27, 2006.

21. On May 3, 2006, the BOCC issued a verbal decision "preliminarily" denying the application. The denial was fundamentally based on the BOCC's determination that the project, as proposed, would cause unacceptable visual and shadow flicker impacts on residents residing in the vicinity of the project. . While the BOCC preliminarily denied the project due to the proximity of

turbines to non-participating landowners, each County Commissioner offered varying opinions about the needed setbacks, ranging from 2,000 feet to a minimum of one-half mile. The Applicant advised the County that these setbacks would render the project unviable. At this stage, although the BOCC did not take formal action by way of a motion or otherwise to define this essential project development regulation, it clearly indicated it would be adopting, for this project, a minimum turbine setback of 2,500 feet from non-participating landowner's residences. Following the BOCC's preliminary decision to deny the project, the Applicant met with the County staff in an effort to determine whether it was possible to change the project further in order to accommodate the various setback requirements identified in the verbal deliberations by the BOCC. Letters were exchanged between the Applicant and the County regarding these ongoing efforts to satisfy the BOCC's requests. While the BOCC preliminarily denied the project due to the proximity of turbines to non-participating landowners, each County Commissioner offered varying opinions about the needed setbacks. At this stage, the BOCC did not take formal action by way of a motion or otherwise to define this essential project characteristic. Following the BOCC's preliminary decision to deny the project, the Applicant met with the County staff in an effort to determine whether it was possible to change the project further in order to accommodate the various setback requirements identified in the verbal deliberations by the BOCC. Letters were exchanged between the Applicant and the County regarding these ongoing efforts to satisfy the BOCC's requests.

22. .On May 31, 2006, the Kittitas County Board of County Commissioners reviewed draft findings of fact and conclusions of law denying the project. The BOCC formally identified minimum setbacks from existing non-participating residences of (2500 feet) and non-participating owners. The Applicant advised the County that these setbacks would render the project unviable.

On June 6, 2006, by Resolution No. 2006-90 the BOCC denied the project. The Applicant filed its Second Request for Preemption on June 20, 2006.

23. The Applicant made all reasonable efforts to resolve "noncompliance" issues with the County as required by WAC 463-28-030. In summary, the Applicant made two efforts to seek local consistency, reduced the project in half to minimize impacts, deployed substantial expert witness resources to the County process, and participated in protracted hearings. The Applicant's efforts were made, despite a County process that is uniquely complex and discretionary, duplicates the EFSEC role and process, and does not meet EFSEC standards for the expeditious siting of energy facilities.

LAND USE COMPLIANCE

24. The Project would be constructed in rural Kittitas County, on open ridge tops between Ellensburg and Cle Elum at a site located approximately 12 miles northwest of the city of Ellensburg. The Project area is currently zoned as Forest and Range and Agricultural-20. Wind farms can be an allowed use within these rural zones, but only through application of the County's Wind Farm Resource Overlay Zone. The Wind Farm Resource Overlay Zone requires: (1) and amendment to the Comprehensive Plan Land Use map by way of a "subarea plan" (2) a site-specific rezone; (3) execution of an agreed development agreement; and (4) issuance of a "Wind Farm Permit." (KCC Chapter 17.61A). While the Chapter 17.61A purports to be a single decision process, as shown in the County's "Findings of Fact and Conclusions of Law" appended to Resolution No. 2006-90, the County also denied the Project for not redundantly satisfying the criteria in KCC Chapter 17.98.020E, applicable to "rezones". Although the project has been

deemed inconsistent with local land use plans because Kitttitas County failed to grant the Applicant an overlay zone approval, the project is not inconsistent with the goals and policies of the County comprehensive plan or the underlying zoning designations.

Consistency with the Comprehensive Plan

25. Although the project has been deemed inconsistent with local land use plans, the Project conforms to all relevant General Planning Goals, Objectives and Policies defined in the Kittitas County Comprehensive Plan, including but not limited to the following:

26. Windpower development as seen in the Kittitas Valley Wind Power Project is clearly an enhancement of the energy portion of the County's natural resource industry, a status it achieves while also assisting to maintain the agriculture sector in the Project's vicinity which is planned for rural uses, and zoned Agruculture-20 (A-20) and Forest & Range (FR).(GPO 2.1*)*

27. Windpower in general and the Kittitas Valley Wind Power Project in particular represent economic diversification. Construction of the project is expected to create up to 253 temporary jobs during construction and 12-20 permanent, family wage new jobs (DEIS page 3.7-8). The Project would also lower the effective property tax rates on landowners, a further benefit to the agriculture community. Windpower development of agricultural lands will greatly aid agricultural landowners, helping to sustain long-term agricultural use of the properties, helping to insulate rural landowners from economic cycles typical in the rural economy. (GPO 2.2)

28. The Project area and vicinity are planned and zoned for forest and range and agricultural uses, not residential development. Plan policies and the zoning code specifically prohibit

sprawling residential development in this area of the County, confirming that it is the County's GMA-based policy to avoid extension of urban services in the area. The Project will provide economic development without imposing demands on public utilities and services. (GPO 2.3)

29. As referenced in the Findings related to GPO 2.3, the Kittitas Valley Wind Power Project will not impose infrastructure costs on the County, while tax benefits will be significant, unlike residential development in the project area that would create substantial infrastructure costs for the County. (GPO 2.5)

30. .With only 0.4% of the County's total acreage affected by the 6,000 acre Project area, and fraction of that (90 acres) occupied by Project improvements, ample opportunity remains for flexibly balancing land use countywide. Moreover, by providing economic incentives for rural landowners within 6,000 acres of the A-20 and FR zones to sustain rural agricultural and natural resource management and development land uses, the Project will help reinforce the County's rural land use policies and help to maintain the Comprehensive Plan's flexible balancing of uses. (GPO 2.6)

31. The Project is a rural-friendly, agriculture-friendly private sector development, enabling sustainable agricultural and natural resource management uses in the vicinity. The Project provides a unique opportunity for economic growth and development in a rural area, without compromising the County's GMA-based Comprehensive Plan and zoning code policies and requirements for the protection and preservation of agricultural and natural resource-based land uses, practices and traditions. (GPO 2.7)

32. The Project's design provides many benefits to fire districts concerned about wildland fire management, including development of access roads that serve as fire breaks; providing on-site equipment that supplements the fire district's own resources; and controlling site access and reducing the chance of fire. The Applicant has already entered into a fire services agreement with FD #1 that will provide fire protection for the life of the Project, including areas which currently have no fire protection whatsoever. In addition, under the terms of the Fire Services Agreement, the Applicant will purchase a new brush rig to allow the fire district to better fight fires in the area. . (GPO 2.11A)

33. The Project conforms to the County's Private Property Planning Goals, Objectives and Policies and others related thereto. The County places a high priority on private property rights. This includes the rights of rural landowners to continue agricultural and natural resource management and development of lands planned and zoned for rural land uses. Wind energy development is a key strategy to enable and encourage ongoing rural land uses, and to provide incentives for rural landowners not to convert their lands to sprawling residential uses. Property rights considerations are a strong argument for approving this Project. The Project's landowners – including long-time residents interested in continuing family ranching and other agricultural and natural resource management and development uses – have partnered with the proposed Project to enable sustainable rural land uses in a large rural area of Kittitas County.These policies require that landowners should not be expected to forgo the opportunity to develop wind generation or other use on their properties due to potential, subjective visual effects. The Project will be located primarily on private open rangeland to be leased or purchased by the Applicant. Parts of the

Project are proposed on land owned by the Washington Department of Natural Resources (DNR). These comprehensive plan policies suggest that landowners should not be expected to forgo the opportunity to develop their properties because of potential subjective visual effects within a limited area of the County. Under this Plan Policy, such preservation of "scenic vistas" would be considered for "public benefit." The applicability of this Policy is particularly pronounced in this area of the County, where the rural landowners have a right to rely on the County's GMA-based planning and zoning, and have a right to expect that the County will enable and encourage ongoing, sustained rural land uses, without infringement by incompatible residential sprawl. (GPO 2.12) (GPO 2.13) (GPO 2.14) (GPO 8.7) (GPO 8.9) (GPO 8.62)

34. The Project is proposed in an area that the County has zoned and planned for rural land uses. The Applicant is in partnership, through its land agreements, with private and public property owners comprising the underlying landowners. The Project will not negatively affect either property values or land sales adjacent to the site

35. .The Project is compatible with traditional rural land uses and is an alternative to the development of residential subdivisions or other uses which do not preserve open space or encourage rural land conservation. The Project will provide significant economic incentives for ongoing rural/agricultural land uses. Through economic incentives to participating landowners, the KV Project will effectively preserve a 6,000 acre area for rural uses and rural character, fulfilling the promise of this Plan Policy. Traditionally, the Project area and surrounding lands have been used for cattle grazing, recreation, hunting and natural resource development, extraction and production, all of which are compatible with the Project. Generation of electricity using wind

power is a relatively new, rural land use which generates revenues to landowners and the public through taxes and royalty payments to state agencies (WDNR). In an area such as the Project site, this use is compatible with the traditional land uses, enabling the lands to retain their rural character, as opposed to residential development. The development of the Property fulfills the Plan Goal of *"allowing as much as possible for diversity, progress, experimentation, development, and choice in keeping with the retention of Rural Land."* In the Northwest, wind energy development is a relatively new rural, natural resource-based land use. Throughout the Northwest, wind energy generation has proved itself as a highly successful, progressive means of diversifying and developing rural natural resource industries and economies, fully compatible with ongoing cattle and other agricultural operations. It is a key choice in retaining rural land uses and traditions. (GPO 8.11*)*

36. Wind energy production is a type of resource-based industry in that it uses a natural renewable resource, the wind. As stated above, the proposed Project is consistent with this policy encouraging such industries.(GPO 8.42)

37. The Project will promote both economic development and agricultural land conservation. It will enable the conservation of a 6,000 acre area of Kittitas County, providing incentives for ongoing, sustainable agricultural and natural resource management uses. (GPO 2.118)

38. Royalty payments from the Project to the landowners are a non-tax incentive to retain productive agriculture use. This Plan policy is met without burden to the taxpayers of Kittitas

County – in fact, taxpayers and the County as a whole will significantly benefit from the Project. (GPO 2.122)

39. The Project's royalty and other payments to landowners and the property tax payments to the County and other taxing districts which reduce the tax burden on landowners will greatly enhance the economic viability of ranching and other agriculture operations. Implementation of the Wind Farm Overlay Ordinance within the proposed Kittitas Valley Wind Power Project Subarea Plan boundary would signal the County's support for laws and regulations which enhance agriculture and other rural uses, in accordance with Comprehensive Plan policies. The Project area is planned for and zoned for agricultural, ranching and natural resource management and development activities. Approval of the Project will reinforce the County's commitment to its GMA-based land use planning goals and policies, will enable landowners within a 6,000-acre rural area to maintain and preserve rural land uses, and will implement policies and regulations intended to protect rural land uses, and to discourage residential sprawl. (GPO 2.110)

40. The Project turns the decision to sell farm ground for housing into a discretionary act on the part of the landowner, rather than an act of economic necessity, because of the combined benefits of Project payments to landowners and the reduced property tax burden. The Project will provide critical support to the agricultural community, reinforcing agricultural and natural resource management land uses and rural traditions. (GPO 2.114)

41. The Project would be developed on non-irrigated land, most of which is used for cattle grazing. While this land does not meet the definition of Prime Farmland, its ongoing use for cattle

operations will constitute a continuation of a productive agricultural or farming use. Removal of only approximately 90 acres of rangeland required for the overall Project footprint would not significantly affect the productivity of cattle grazing operations on this land, and the Project will enable sustained cattle operations within the Project boundaries. Therefore, the Project is consistent with this land use policy. (GPO 2.114B)

42 The Project will encourage both economic development opportunities and agricultural/farmland and natural resource management land conservation. (GPO 2.118) (GPO 2.122)

Consistency with Zoning

43. The underlying zoning designations are explicitly intended to protect the rights of landowners engaged in agriculture and natural resource development and production activities, and to prohibit the encroachment of nonagricultural land uses such as sprawling residential uses, that impair farming, ranching and other natural resource management, development and production uses.

44. The Project is consistent with the controlling purpose and intent of the underlying zoning districts.

45. The County's Growth Management Act (GMA) planning effort and policies define the entire Project area and most surrounding areas as protected for agricultural and natural resource

management, development, extraction and production activities. County GMA-based policy, as defined by County plans and zoning code, is to prohibit sprawling suburban housing developments and to encourage rural activities within the vicinity of the KV Project site. The minimum lot sizes in both the A-20 and FR zones are 20 acres. Land uses that are incompatible with agricultural uses, including cattle operations, natural resource management, development and production, by definition, do not comply with the County's plan and zoning, nor do they comply with the mandates of the GMA.

46. A key legal and policy requirement in the County's rural zones and associated Comprehensive Plan policies is the protection of the rights and traditions of those engaged in agricultural uses and practices. In developing this Project, the Applicant has partnered with agricultural and forest and range landowners in pursuit of their rights to use their lands in accordance with this vision and policy. The Code explicitly protects these landowners against infringement of these rights by incompatible sprawling residential development. While the preservation of the rights of agricultural landowners is paramount, to achieve compatibility with scattered low-density residential development in the vicinity, and to better satisfy "compatibility" criteria addressed below, the Applicant has significantly down-sized and modified the Project design and layout to further minimize and mitigate potential impacts below those identified in the DEIS. This includes reducing the number of wind turbine generators from 150 to a maximum of 65, increasing turbine setbacks to address visual concerns, eliminating turbines in the areas with greatest potential for visual impacts, eliminating any significant "shadow flicker" impacts, further reducing noise impacts, and significantly reducing the number of required FAA nighttime safety lights and elimination of daytime FAA lights.

47. Coupled with the rural agricultural and natural resource management zoning designations, the intent of the Kittitas County Code's wind farm provisions is to provide for the recognition and designation of properties located in rural areas that are, as a matter of County legislative policy and enactment, suitable for wind energy production, while protecting the health, welfare, safety and quality of life of the general public and ensure that the Project is compatible with land uses in the vicinity. As a matter of policy, the County has determined that the A-20 and FR zones are generally suitable for wind energy facilities.

48. Kittitas County's "overlay" zone is legally akin to approval of a planned unit development within a zoning district where planned unit developments are allowed. The criteria are typically those relevant to the particular overlay, *not* traditional rezone criteria. This is particularly true in situations such as here, where the use does not, harm or impair underlying permitted rural land uses. Wind farms provide important economic incentives and supplemental income sources to facilitate and enable ongoing agricultural and natural resource management uses within agricultural and forest and range zones.

49. As provided in KCC 17.61A.040, these County's approvals shall only be made if the BOCC determines that:

1. The proposal is essential or desirable to the public convenience;
2. The proposal is not detrimental or injurious to the public health, peace or safety or to the character of the surrounding neighborhood; and

3. The proposed use at the proposed location(s) will not be unreasonably detrimental to the economic welfare of the county and it will not create excessive cost for facilities and service.

50. The Applicant does not propose to change the underlying land uses allowed within the applicable zoning districts, and in fact, the Project will facilitate the continuation of sustainable agricultural and natural resource management practices and traditions. Fundamentally, properties are suitable for wind farm development (and consequently are generally suitable for the subarea plan and zoning overlay designations) if they are situated within the appropriate underlying zoning district (A-20, Forest &Range, Commercial Agriculture, and Commercial Forest).

51. The Project will not be materially detrimental to the use of properties in the immediate vicinity of the Project area because all existing land uses within the Project Area - including grazing, natural resource management and development, open space, and rural residential - would continue, with no limitations or restrictions on the use of properties in the immediate vicinity as a consequence of the proposed Project.

52. Notwithstanding the findings in Resolution 2006-90, the record, including the deliberation by the BOCC, establishes that the BOCC concluded the Project complies with the Wind Farm Resource Overlay ordinance, KCC Ch. 17.61A in all aspects, except for visual and shadow flicker affects to existing residences within 2,500 feet of turbines. The Board's conclusions on project compliance with the DEIS impacts and Development Agreement mitigation measures are discussed during the April 12, 2006 Public Hearing

53. The Applicant has stipulated that it is able to mitigate shadow flicker by programming the turbines to shutdown during those specific times that significant shadow flicker occurs. It further stipulated that it would institute this mitigation to all existing residences on non participating landowners within 2,500 feet of a turbine that has a line of sight view (view of turbine not blocked by topography and/or vegetation) from the residence to that turbine, upon request of the non participating land owner.

54. At the County hearings the Applicant offered a 1,320 foot setback from existing residences of non-participating landowners. The County ultimately denied siting of the Project, demanding a 2,500 foot setback to avoid a perceived visual (looming) effect, without providing any objective basis for the setback. The effect on the views to houses with turbines within 2,500 feet is not as stated by the County. Instead of the 27 houses assumed to be affected there are actually only eleven that would have other than an insignificant view at the most, due topography and screening. Of these eleven houses, the primary viewshed of all but one is not towards the turbines within 2,500 feet. Further objective evidence in the record establishes, that the view of the turbines ceases to dominate ("loom") at a distance of about four times the height of the structure. The degree to which visual impacts are adverse significantly depends on the viewer's location and sensitivity and the impact on view quality. Because of the fact that the primary viewsheds of houses that can actually see the turbines within 2,500 feet are overwhelmingly away from or not directly towards the turbines and because most of the turbines are located in "Zone 3", as described in Dr. Priestley's supplemental testimony, the visual impacts with a 1,320 foot setback for this project are less than significant. For projects like the Kittitas Valley Wind Power Project, whose siting and

design have shaped its overall visual impacts, any visual impact that might be identified as affecting small numbers of viewers must be evaluated in the context of the fact, that on the whole, the projects visual impacts are relatively low. Further, the DEIS and Addendum thereto concluded that the visual impact of the project would not constitute significant impacts because of the low to moderate levels of sensitivity of the affected views. Moreover, as the SEPA lead agency, it is appropriate and necessary for EFSEC to balance the moderate impact to a handful of residences against the overwhelming public benefit of the Kittitas Valley Wind Power Project.

55. The Applicant has agreed to the development standard items addressed in this document taken from the proposed Development Agreement Between Kittitas County, Washington and Sagebrush Power Partners, LLC submitted in the County process for which there was no disagreement. These development standards and the above considerations given to the shadow flicker issue and the potentially perceived "looming" effect, give due consideration to the local community interests and governmental interest affected by the Project.

PREEMPTION

That the Horizon's Good Faith Efforts to Resolve the Noncompliance Issues.

56. Applicant was unable to reach an agreement to resolve the issues between it and the County in effort to achieve local land-use consistency is apparent. The near-impossibility of such efforts made both for the original 2003 County application and the 2005-2006 effort are detailed at great length in the record. Nonetheless, buoyed by its desire to make all reasonable efforts to obtain such land use consistency, the Applicant expended huge efforts, in good faith, to attempt to

discern and then satisfy the expectations of Kittitas County.

Horizon has Made all Reasonable, Good Faith Efforts to Achieve Consistency with the Kittitas County Comprehensive Plan and Zoning Code

57. The Applicant engaged in a multi-year efforts to proposed changes in the County ordinance, seek clarity in the application review process, establish an understanding that the County would not independently seek to exercise SEPA authority, and the County's assertion to EFSEC that the County would, itself, ultimately judge whether the EFSEC EIS was "adequate" for Project review. Recognizing the EFSEC requirement that the Applicant make the necessary application for change in, or permission under, such land use plans or zoning ordinances, and make all reasonable efforts to resolve noncompliance, the Applicant proposed two different ways to "change" the County's wind farm ordinance in order to achieve "consistency" by "decoupling" the comprehensive plan and zoning requirement of KCC 17.61A from the site-specific permitting requirements. The County refused. The Applicant then filed its first County application pursuant to KCC 17.61A, on March 27, 2003 ("first application"). The Applicant then commenced protracted efforts to seek a County hearing. Among many problems with the County, the Applicant faced significant challenges with the County's legal position regarding EFSEC's role as the SEPA lead agency, in particular the County's efforts to subvert and preempt EFSEC's statutory SEPA lead agency role. The County took the position that the County could not review a local permit application until the County had determined "in its own judgment, that he EFSEC DEIS, and response to the DEIS, was adequate. The County's position effectively meant that we faced two permitting processes, with redundant and sometimes conflicting requirements and expectations. After the County filed documents with EFSEC demonstrating its intent to subvert

EFSEC's SEPA authority, the Applicant filed a request for preemption with EFSEC pursuant to WAC 463-28-040 on February 9, 2004, and withdrew the first County application.

61 The Applicant's good faith efforts in 2005-2006 began with Horizon's decision to withdraw its first request for preemption in the summer of 2005. Having been through the initial round of hearings conducted by EFSEC in 2004, Horizon resolved to revise and reduce its project and resubmit its application to the County. The revisions were a conscious effort to address the concerns it had received from both the County and the public about the initial Kittitas Valley Project submittal Before submitting its new application, Horizon met with EFSEC and the County and informed them of its intentions. On September 30, 2005, the Applicant submitted a Development Activities Application pursuant to Kittitas County Code 17.61A, which was followed by a revised Application on October 14, 2005 utilizing county-mandated forms. Following an October 17, 2005, determination from the Kittitas County Department of Community Development Services that the Application had been deemed complete, and at the request of both EFSEC and the County, the Applicant withdrew its initial request for pre-emption on October 19, 2005.

58. Taking into consideration the County's permitting process lacked specific development regulations or criteria that could be utilized for crafting the requisite Development Agreement, the Applicant's staff anticipated a lengthy series of informal and formal discussions with County staff in order to determine what kind of criteria Horizon should be addressing and what kinds of materials were expected by the Kittitas County Board of Commissioners ("BOCC"). Horizon anticipated that the County staff would actively participate in the negotiation of material issues and specific elements of the Development Agreement, as had occurred between Horizon and the

County in the process leading up to presentation and adoption of a final Development Agreement for the Wild Horse Project, also in Kittitas County.

59. Early in the process, it became apparent to Horizon that the BOCC would not follow its prior practice of delegating to their staff a role in the process to enable them to address site-specific issues. Moreover, the process afforded no ability to directly contact decision-makers on such specific topics), leaving Horizon no effective means to "negotiate" a development "agreement." The Applicant did not abandon the process. Instead, it recognized that a public process that did not allow for direct negotiation could lead to miscommunication and misunderstanding, and Horizon staff consistently initiated staff-level meetings in an attempt to assure it was providing the County with desired, timely information. Those meetings were frequently followed up with a written summary from the Applicant to County staff in order to ensure that the Applicant had fully understood the general points discussed with staff

60. During this process the Applicant repeatedly tried to anticipate the appropriate response to issues presented to it by the County. Yet with no apparent consideration of the materials, proposed Findings of Fact, and testimony presented for consideration, and principally clearly concerned with the ability of property owners to subdivide the surrounding lands into sprawling residential developments in violation of the County's Comprehensive Plan and zoning code, on February 13, 2006 the Planning Commission recommended that the BOCC deny Horizon's Application.

61. At the BOCC public hearing of March 29, 2006, five months after its application to the County was deemed to be complete, the Applicant was finally presented with a list of concerns

directly from the BOCC, including each Board member expressing diverse mandatory setback distances, all significantly greater than Horizon had proposed many months before. Although the County overtly acknowledged that it was unable to present these concerns earlier due to the nature of its own process, the Applicant requested (and was given) just 5 minutes to caucus in order to respond Despite the County's months-long delay in openly and directly disclosing these concerns, the Applicant reviewed its materials already in the record, including a previously submitted matrix of information, and resolved that it had created a sufficient record for the BOCC to determine land-use consistency with the County's comprehensive plan and zoning code. The BOCC Chairman himself acknowledged that the matrix submitted by Horizon was what the Board had wanted.

62. During the many nights of hearings before the Board, the Applicant repeatedly pointed out the changes it had made since its initial proposal in 2004 in effort to remedy the concerns about the Project. Expert reports such as that of the Applicant's property values expert, P. Barton DeLacy, had been updated due to the concerns raised by the public in meetings and hearings on the original application. Rather than starting from scratch, the Applicant followed the County staff's advice to use the Wild Horse template for the KV Development Agreement. In response to the public's concerns about visual impacts, the Applicant voluntarily reduced the projected number of turbines proposed from 121 to between 65 and 80 in effort to mitigate visual impact. *Id.* at pp 31-32, removing turbines in the northern tier of the Project, where there is a greater concentration of homes and developable lots. (The Applicant also submitted a matrix of requested information to the Board early in effort to afford the public and the parties ample opportunity to consider it

63. On April 12, 2006, despite never having engaged the Applicant in a discussion of turbine setbacks from non-participating property owners, the BOCC gave the Applicant an ultimatum: either agree to accept an unknown, undefined larger setback than proposed in the Development Agreement, or the BOCC would kill the process that night. Horizon was given ten minutes to decide whether its Project, by then four years in the process, would be killed by its failure to agree to an unknown, but larger, setback being demanded by the BOCC. Horizon was asked "to address whether this [BOCC hearing] is a waste of time or not". Despite the take it or leave it ultimatum, the Applicant iterated that it was very confident that through micrositing the issues could be worked through by an open conversation on Development Agreement provisions.

64. In response to continuing questioning by the BOCC and County staff about the exact number of turbines, the Applicant agreed to limit the Project to a maximum number of 65 turbines. In response to the BOCC's mistrust of the Applicant's acknowledged agreement to limit turbine construction to pre-defined corridors within a larger subarea boundary, the Applicant offered that if other issues could be resolved, Horizon would reduce the subarea boundaries and not seek additional the turbine locations without the County's consent

65. Insofar as shadow flicker was a concern to the County and public, the EFSEC DEIS and Addendum thereto indicated that the Project did not present probable significant adverse impacts. Nonetheless, the issue remained of concern to the public. Consequently, at the very first joint BOCC/Planning Commission public hearing in January, 2006, the Applicant submitted an additional technical memo addressing shadow flicker for the reduced Project layout, the analysis of which included several conservative assumptions which exaggerate the impacts on any individual

residence. The recommended mitigation measures proposed by EFSEC's independent consultant in the DEIS included planting of trees; installation of shades; and that installed shades be placed on an electric timer. Notwithstanding these recommended mitigation measures, the Applicant offered that if an adverse impact were identified, new technology could be utilized that can curtail the operation times of certain turbines as needed to reduce the shadow flicker to a virtually imperceptible level. This offer to totally eliminate any demonstrated adverse shadow flicker impact was never even acknowledged, not accepted, by the BOCC. Blind to this offer, the County used shadow flicker as a basis to deny the Project

66. The Applicant initially proposed an industry-standard setback of 1,000 feet from existing, non-participating residences (March 27, 2003 and October 14, 2005. During the comment period for both the DEIS and DEIS Addendum (following re-submittal in 2005) Kittitas County never submitted a comment expressing a belief that the 1000 feet was inadequately analyzed or that the analysis failed to analyze the perceived "looming " effect on neighboring residents. There is no documentary record whatsoever to substantiate this as an issue for environmental impact analysis under SEPA at the behest of Kittitas County.

67. At its April 12, 2006, public hearing, the BOCC simply told the Applicant that a 1,000 setback from existing, non-participating residences was a "deal-killer. The BOCC demanded that the Applicant to "present additional information to suggest a setback from their perspective, mitigated the impacts Yet the BOCC also berated Horizon for submitting "new information," totally precluding any reasonable ability to "negotiate" without exchange of information. Notably, this was not a command or motion to require the Applicant to prepare and submit a new

Development Agreement. In fact, prior to the County's final action denying the Project, the BOCC never adopted any formal motion or took any vote to provide any formal direction to the Applicant regarding the "acceptable" setback distance Notwithstanding the fact that Kittitas County had failed to timely or appropriately raise this issue as a basis for added environmental review, the Applicant continued to proceed in good faith in the process of review and acquiesced to the ultimatum delivered on April 12 to either offer up a larger setback or the BOCC would kill the Project that night.

68. By letter dated April 25, 2006 to the BOCC, (Exhibit 7 to Second Request for Preemption) the Applicant agreed to extend the originally proposed setback by 32%, up to a distance of one-quarter mile, or 1,320 feet

69. The BOCC refused to discuss this significantly increased setback proposal of 1,320 feet at its April 27, 2006, public hearing because the BOCC's "biggest concern" was not about the distance proposed but was instead about the fact that the increased setback proposal did not come in the form of a newly drafted Development. The Applicant had sought but received no guidance from County staff as to what the BOCC would expect to be presented in order to answer the BOCC's request for information regarding a larger setback. County staff simply suggested that the Applicant read the transcript for itself and try and discern the BOCC's desires Again, the record contains no citation to a specific motion regarding the acceptable form of document in which to present information on a larger setback, because none was made. Despite this lack of clear instruction, the BOCC refused to discuss, at its April 27, 2006 public hearing, the materials presented in good faith by the Applicant simply because it did not like the form presented by the

Applicant in response to confusing and sometimes conflicting suggestions by the various BOCC members on April 12, 2006.

70. On May 3, 2006, the BOCC variously announced desires to establish setbacks of 2,000 feet from non-participating property lines; 2,500 feet from non-participating landowners' residences; one-half mile; and one-half mile to 3000 feet During that hearing, the BOCC appeared to agree that in addition to residential setbacks, a 2000-foot setback would be required from all non-participating property lines Yet in the County's final decision, no mention was made regarding the 2000-foot setback or any property line setback This disparity is extremely disturbing for at least three reasons. First, it demonstrates the impossibility of accurately divining the BOCC's intent and responding accordingly. Second, the 2000-foot property line setback lacks any support in the record, and should be considered arbitrary, particularly given the size of properties and the ability to orient improvements as desired by the property owners. Third, as shown in Planning Director Piercy's cross-examination testimony, either the County staff actually ***did*** confer with the BOCC regarding setback issues outside of the public hearing process (vehemently denied under oath) or the final decision itself does not reflect the BOCC's actual intent, and departs from the BOCC's deliberations

71. This was the first articulation of the BOCC as to what it viewed as an acceptable setback. Upon receiving Horizon's respectful reply from Mr. Chris Taylor that a 2,500 foot setback would remove so many turbines as to make the Project unviable, the Chairman of the Board, Mr. David Bowen, acknowledged the impasse, but also acknowledged that "Mr. Taylor's comments regarding the time spent on this and the effort that's gone into this, everybody has taken this quite seriously

and I appreciate those comments you [Horizon] made

72. The BOCC did not attempt to discuss a smaller setback, but instead voted to preliminarily deny the application "based on the contents of the Development Agreement dated May 1, 2006, which contains fatal flaws and inconsistent language which the applicant has indicated for the record they do not wish to correct."

73 In this fashion, the Applicant's years of good faith, reasonable efforts to demonstrate its application was consistency with the Kittitas County Comprehensive Plan and zoning code came to an abrupt end. As discussed below, it is most notable, although almost a footnote, that the BOCC never discussed how the application was consistent with the Kittitas County Comprehensive Plan and zoning code, notwithstanding the fact the Applicant submitted draft Findings of Fact and Conclusions of Law with its October, 2005, Development Activities application to support the application's consistency with the same. Horizon's application was denied based on a development regulation – setback distance – that was not existent, announced or disclosed until after the record was closed.

74. The Applicant's good faith efforts were made, despite a County process that is uniquely complex and discretionary, which duplicates the EFSEC role and process, and does not meet EFSEC standards for the expeditious siting of energy facilities The Applicant's good faith efforts were made in the context of a uniquely complex and flawed process. The County's hearing record reflects the following procedural impediments, which appear to the Council to be contrary to

mandates under Washington's Growth Management Act, RCW chapter 36.70A and the Regulatory Reform Act, RCW chapter 36.70B:

(1) there is no adopted procedure to follow, and the Code does not make clear to the applicant or the public that a joint "hearing" before two distinct hearing bodies will occur and be continued month after month after month; (2) dual hearing bodies appear to be prohibited by law; (3) while continued hearings are common, the Kittitas County process is not compatible with the "single hearing" rule; (4) the process breeds tremendous confusion, conflict and delay, confusing even the decision makers; (5) instead of considering the KV Project under the County's GMA-based Comprehensive Plan policies and zoning code, the BOCC denied the Project due to a perceived lack of "compatibility" with the "neighborhood." *See*, Resolution 2006-90, Findings 27, 38, 39, and 39 [sic, on p. 11]. The BOCC mischaracterized the area, and it was apparent that neither the BOCC or County staff had any awareness of the character of extremely low density nature of the area, demonstrating scattered development and substantial topography that will minimize views of the turbines. The Siting Council has visited the site, and finds that the Applicant's description of the population and characteristics are accurate. The density and character of the existing development (used by the County to deny the Project) has been grossly exaggerated both by the County and other intervenors; (6) neither the wind farm ordinance nor the application forms provide "timely and predictable procedures" as required by the Regulatory Reform Act. Lacking a clear process, in both the 2006 proceedings, and in the Applicant's first attempt to seek a land use consistency determination, the County attempted to assume EFSEC's SEPA lead agency authority; (7) the County's use of a development agreement in this process, essentially requiring an "agreement" with uncodified regulatory requirements as a condition of a permit, is not consistent with the Legislature's purpose or intent for development agreements, intended to provide a

mechanism to ensure predictability in complex development application processes; (8) the County's process appears to be deliberately crafted to make it nearly impossible for an applicant to seek preemption through EFSEC's statute and applicable rules, and thereby establishes a process that is not based on local criteria and standards, duplicates EFSEC's permitting role, and is not considered expeditious, particularly as part of the EFSEC process. The process renders it impossible for an applicant to seek a "change in" the County's comprehensive plan and zoning without also seeking a site-specific permit from the County, and the inextricably "bundled" quasi-judicial and legislative processes appear flawed under the GMA, and also duplicate EFSEC's sole and exclusive jurisdiction over the siting and construction of major energy facilities.

Horizon and the County were Unable to Resolve the Noncompliance Issues.

75. As noted above, WAC 463-28-040(2) requires the applicant to show "[t]hat the applicant and the local authorities are unable to reach an agreement which will resolve the issues." The record is clear. For the reasons discussed above, Horizon and the County were unable to resolve noncompliance issues. A failure to reach agreement is not the same thing as a failure to make all reasonable, good faith efforts. Neither EFSEC's statute nor its administrative rules require land use consistency – only reasonable, good faith efforts.

76. The fundamental substantive reason Horizon was unable to secure a resolution of land use consistency issues was the County's lack of understanding regarding the aesthetic issues, misapplication of the EFSEC DEIS and Addendum thereto, and a decision regarding setbacks that lacks any basis in the record, and is devoid of any policy rationale.

Alternate Locations Within the Same County Have Been Reviewed and Found Unacceptable.

77. To seek preemption, an applicant must show that "alternate locations which are within the same county and city have been reviewed and have been found unacceptable." WAC 463-28-040(3). An analysis of alternative sites in the County for the Kittitas Valley Wind Power Project was included in the in Chapter 2.7 of EFSEC DEIS, the EFSEC Supplemental DEIS, Chapter 2.4.1 of the Kittitas County DEIS for the enXco Desert Claim Wind Power Project and Chapter 3.16 of the Wild Horse Wind Power Project DEIS.

78. The analysis in the EFSEC DEIS was the same used by Kittitas County for its DEIS for the enXco Desert Claim wind farm site and the Wild Horse DEIS. The County denied the enXco Desert Claim Project, while approving the Wild Horse Project. These DEIS's established criteria for the analysis of alternatives, and then reviewed potential sites in Kittitas County. The criteria are as follows: 1) sufficient wind resource (the most important); 2) proximate/adequate transmission facilities; 3) large land area; 4) absence of significant environmental constraints; and 5) property owner interest/property availability/control of property. The DEIS's concluded that although other sites for wind power generation may exist in Kittitas County, none would satisfy the test for availability or practicability for the KV Project. Furthermore, given that other companies are developing these alternate sites, these locations are not available to the Applicant.

The KV Site is a Unique Opportunity with Proven, Robust Winds and Sufficient On-Site Transmission Facilities with Ample Capacity

79. The Applicant has considered other locations in the County, but has not found any that are acceptable alternatives to the proposed site. The issue of alternative sites has also been addressed

in detail in EFSEC's Supplemental DEIS. There are many factors that make this proposed site unique. First of all, there is a robust and extremely well documented wind resource that has been measured carefully during a period of over six years The Applicant is not aware of any alternative sites that are equally well documented that are available. The fact that predictive modes and "wind maps" indicate potential in other areas of the County is no substitute for high quality, long term, on-site data. This type of data dramatically reduces the financial risk of the Project from an investment prospective

80. The Project benefits from the presence of multiple transmission lines of appropriate voltage and with adequate capacity to carry the entire output of the Project. The lines proposed to interconnect to are literally overhead and require no new construction of feeder lines. Such feeder lines are costly and entail additional environmental impacts. A System Impact Study has been completed for both BPA and PSE and this has confirmed the viability of interconnecting the Project to the adjacent 230kv lines. In addition, these proposed interconnections can be achieved without substantial network upgrades, which further enhances the Projects economic viability. The Applicant has secured advantageous transmission queue positions with both BPA and PSE due to the fact that those requests were originally filed several years ago and are senior to others in the queue

89. The Applicant has existing land agreements with participating landowners and continues negotiations with neighboring property landowners. It is not self evident that owners of other potential sites would be willing to enter into such agreements with Horizon.

90. An exhaustive environmental analysis has demonstrated that the impacts to the environment and in particular wildlife and habitat, of the Project at the proposed site are minimal.

The Wild Horse Expansion Site is not an "Alternative" to the KV Site

91. The Applicant currently has an option to purchase a small amount of land (about 1,400 acres) from the same private landowner from whom they acquired rights to the Wild Horse site. With regard to any development interests the Applicant may have in the vicinity of the Wild Horse Project, Horizon does not at this time have a formal proposal for an additional wind project in that area and has not applied for any permits. The Applicant has two temporary meteorological towers on that property that are currently collecting wind data. The preliminary assessment is that the property under option could accommodate perhaps 20 wind turbines. This is only an initial estimate, but clearly this site is in no way comparable to the Kittitas Valley site in terms of the magnitude of wind energy potential, as it is roughly $1/5^{th}$ the size of the Kittitas Valley site in terms of acreage. Without the presence of existing infrastructure (roads, step-up substation, feeder lines, *etc.*) at the adjacent Wild Horse Project site, a project of this size would not be economically viable under current market conditions. Such a project would best be characterized as an expansion of Wild Horse, rather than a new project, which would require the current owner of Wild Horse to submit an application to the County for an expansion of the current Project.

The enXco Desert Claim and Invenergy Sites Have Been "Reviewed" and are Not Available or "Acceptable" Alternatives to the KV Site

92. The Applicant is aware of only one other formally proposed project in Kittitas County – the enXco Desert Claim Project. As is abundantly clear from the Record, the County denied this project, and if enXco goes forward, enXco will seek EFSEC preemption. The County alleges that

another wind power firm is considering a potential site south and east of the Wild Horse site. The details are unknown for the proposed site, but it appears that the site is under consideration by Invenergy Wind, LLC, a Chicago-based wind power developer. The County admitted that no formal pre-application conference has occurred with the County, and the Invenergy Wind site has submitted nothing to the County in writing. What is clear from the record is that regardless of where any hypothetical Invenergy Wind site is proposed in the County, wind energy is not a permitted use, and the project is explicitly prohibited unless and until Invenergy Wind successfully navigates through Kittitas County's uniquely byzantine requirements for siting wind energy facilities.

93. Notwithstanding the fact that any Invenergy Wind site is prohibited by the County, the Applicant believes that the Wild Horse Project site occupies the most desirable ridges for wind turbine placement in that general area. This is also the opinion of the professional meteorologist consulted in developing the Wild Horse Project, who testified that the due to poor wind resources, the Invenergy Wind site is probably capable of a maximum 50 MW site – a project size that is not considered viable, and certainly is not an acceptable alternative to the robust generation capacity of the KV Project site Furthermore, it the Applicants understanding that the remaining land belonging to the private landowner from whom Horizon acquired the rights to the Wild Horse site, is under option for conservation acquisition, and that some of that land has, in fact, already been purchased for habitat and wildlife conservation purposes Finally, the record indicates that Invenergy Wind's leases have expired. Therefore, it appears that no parcels would be available for wind power development in this location. In addition, Horizon believes that the Wild Horse project will consume most of the remaining available capacity on PSE's intermountain Power

transmission line to which it will interconnect, leaving little if any availability for future projects in that immediate area. BPA transmission lines to the west of the Wild Horse site are 500 KV lines, and therefore interconnecting to them would likely cost somewhere on the order of $10 to $20 million, which would likely be cost-prohibitive.

94. As discussed above, KCC Chapter 17.61A does not allow wind farms as a permitted use anywhere in the County – they are a prohibited use. The County chose, after considerable debate on the issue, to not go through a zoning process that would designate areas in which a wind farm would be permitted. The BOCC instead adopted a project-specific siting/permit process to consider proposed wind power projects on a case-by-case basis. This wind farm siting process is more complex and contains more regulatory hurtles than are required for siting a fossil-fuel fired power plant, nuclear plants, pipelines, or any other type of energy-related facility in the County, without policy rationale for treating renewable energy more strictly than conventional greenhouse gas-producing energy facilities. In effect, under the County's ordinance, there are no alternative areas of the County that are "zoned" for wind energy facilities. There is no site or area in the County that an Applicant can identify that allows a wind farm as a permitted use. In other words, without going through the entire County process for each individual proposed site, there is no zoning district or area where a wind farm can be sited. In essence, an Applicant is unable to find any place in the County in which a wind farm is permitted without submitting multiple applications through the County siting/permit process.

95. The smaller Horizon projects cited by the County in Mr. Piercy's rebuttal testimony (Ex. 51 (DT-T) Exhibit 51-4) are not priority projects for the Applicant, due in part to their small size.

It is important to note, however, that these projects are proposed to interconnect at lower voltages (North Collins Project at 34.5kV and Sardinia Projectat 115kv) than the Kittitas Valley Project (230kV) thus the associated interconnection costs are substantially lower than for the Kittitas Valley Project. Higher priorities have been placed on larger projects in the New York vicinity, including Clinton County Project with 200 MW, Dairy hills with 120 to 132 MW, Machias project 90 MW and Batavia Project at 80 MW. These projects are currently established in the interconnection queue. Interconnection requests for the Sardinia and North Collins projects have not been made, partially because economies of scale continue to make them uncompetitive relative to larger projects in the state

The Project Serves and Implements Interests of the State.

96. WAC 463-28-040(4) requires a request for preemption to address interests of the state as delineated in RCW 80.50.010.

97. The purpose of the KVWPP is to construct and operate a new electrical generation resource using wind energy that will meet a portion of the projected growing regional demands for electricity produced from non-renewable and renewable resources.

98. Recent national and regional forecasts predict increasing consumption of electrical energy that will continue into the foreseeable future, requiring development of new generation resources to satisfy the increasing demand. There is a growing market for electricity powered by "green resources" in the Pacific Northwest. As a result of RCW 19.29A signed into law in 2001, sixteen of Washington's electric utilities were directed to offer a voluntary alternative energy product (essentially an electricity product powered by green resources) starting in January 2002. Local and

regional markets for green power have been increasing. These are the largest utilities in the state representing over 80 percent of the total load in the state. Thus there is an additional sub-market demand for alternative electricity for Washington utilities. Further the majority of the other utilities within the state are looking at alternative resources and conservation.

99. Wind resources, particularly in the Pacific Northwest, have several unique attributes which make them especially valuable when compared to more conventional electricity generating resources. Among these characteristics are price stability (because the fuel is free), easy integration into the Northwest's hydro-based electric system, avoidance of greenhouse gases and risk minimization for purchasing utilities.

100. Several regional electric utilities have recently issued requests for proposals (RFPs) to acquire wind power, including Puget Sound Energy, Pacific Power, Avista Corporation, and Portland General Electric. This trend will accelerate if the proposed ballot initiative, I-937, passes in November 2006, and implements requirements for all the state's electric utilities to increase their use of renewable energy by 15% by 2020.

101. The energy crisis of 2001 and the volatility of the price of natural gas have also created increased demand for wind power to meet the region's future power needs. Puget Sound Energy's 2005 Least Cost Plan has a section entitled "Gas Projects are Losing Favor" which states: "Typically, natural gas-fired projects are easier to site and permit in western Washington than other fossil-fueled plants, and due to the proximity to natural gas pipelines and transmission to the major load centers, natural gas projects had been the default choice in new generation. Today,

with high natural gas prices, these projects are becoming less economical to own. They typically operate on the margin, and require sophisticated and expensive hedging strategies to manage fuel price risk and related volatility."

102. Development of sufficient wind resources in the Northwest will directly address this price volatility. Wind is cost competitive with existing and projected prices of CCCTs, and, because the fuel is free, wind is not subject to the wild price fluctuations associated with gas and oil fired resources. Windpower's short construction time and ability to capture varying wind currents (because of strategic turbine positioning) within a single site also create built in hedges against the seasonal, and even daily, price fluctuations inherent in gas fired resources.

103. Wind power offers utilities more predictability regarding their future energy costs, because once a wind farm is constructed, there are no fuel costs and very little maintenance costs. Wind power developers, unlike developers of natural gas plants, routinely offer utility customers long-term (i.e. 20 years) fixed-price contracts. Increasing customer demand for green energy, the environmental attributes of wind power, and its fixed price have led the region's utilities to include significant percentages of wind power in their latest integrated resource plans. PacifiCorp's 2004 Integrated Resource Plan's "Planned Resources" section states: "PacifiCorp concludes that since the Company is committed to continuing the pursuit of renewable generation as a viable solution to meeting customer demand, it is reasonable and prudent to assume that 1,400 MW of renewable resources should be included as a Planned Resource.

104. Energy prices have continued to rise, in part due to significant volatility of natural gas prices and supply. The risk to national security resulting from dependence on foreign supplies of natural gas and oil has become notorious. Nationally, regionally and in Washington State, there is a growing recognition of the need to develop a significant portfolio of renewable energy resources. The development of the limited number of suitable wind energy sites is now a priority at the state, regional and national levels. Supplying 10 – 20 percent of a utility's energy from wind (the range of most state renewable portfolio standards) will diversify away from the risks associated with reliance on traditional resources. These historical and/or emerging risks are well known: for hydro, they involve annual changes in precipitation and mandated fish protection measures; for coal, price escalation due to transportation costs and regulatory risks of greenhouse gas mitigation measures; and, for natural gas, the aforementioned price volatility. By November 2006, we will know if the Washington State RPS Initiative I-937 will be state law. If this occurs, then Washington State public and investor owned utilities will need to acquire roughly 1500 – 1700 average megawatts (or 4500 – 5000 megawatts of wind capacity) to meet the 15 percent RPS requirement by 2020. While I-937 applies to all renewable resources (e.g. biomass and geothermal), the vast majority of resources acquired to meet the standard will be wind powered.

105. As demand for wind energy has been increasing in the region, wind resources in the state of Washington are finite and limited. As stated in Section 3.5-6 of the EFSEC Kittitas Valley Wind Power Project DEIS; ..."Estimates of the wind resource are expressed in wind power classes ranging from Class 1 to Class 7, with each class representing a range of mean wind power density or equivalent mean speed at specified heights above the ground. Areas designated Class 4 or greater are suitable with advanced wind turbine technology under development today." It further

states that the state of Washington compared to other states, is "ranked in the bottom tier in terms of wind energy potential." This point is echoed Avista's 2005 Integrated Resource Plan Executive Summary: "The wind limitation reflects Company agreement with the Northwest Power and Conservation Council (NPCC) that a limited amount of economically viable wind potential exists in the Northwest."

106. The DEIS also stated in Section 3.5 that the Ellensburg corridor in Central Washington, where the KVWPP, the Wild Horse Project is located and proposed, sustains one of the strongest wind energy resources in the state. Data from several sites throughout the central Washington corridor indicate that exposed areas have a Class 4 to 5 annual average wind resource with a Class 6 resource during the spring and summer seasons. Wind resources of this class near transmission lines and load centers (such as the Kittitas Valley Wind Power Project site) are finite and are critical to meeting state and regional energy needs with abundant energy at reasonable cost, a point that is particularly important when serving the westside market for renewables is considered. Puget Sound Energy's 2005 Least Cost Plan's "Wind is an Emerging Resource" section, states: Wind projects are becoming much more attractive due to the maturity of wind turbine technology, the adequacy of wind resources in the Northwest, trends toward portfolio renewable standards (sic), and current tax incentives. Transmission system constraints that hinder the ability of projects to serve major load centers in the Puget Sound area make projects outside PSE's service territory less attractive.

107. Some of the larger utilities that are short in supply, that have gone with the least cost integrated resource planning approach determined that in many instances renewable resources such

as wind represent the least cost from an environmental and economic cost resource. Utilities are acquiring wind resources and several wind farms have been developed or purchased by Washington based utilities.

108. The State of Washington is part of an integrated electrical system that incorporates most of the western portion of this both the U S and Canada. During the winter heating season the State of Washington is a net importer of electricity. This State is dependent on other portions the U S and Canada to operate its electrical utility systems, as they are dependent on us. In July of 2006 the State nearly had to curtail its system due to extreme hot weather conditions in California. As a result it was necessary draw additional water through the hydro system. These situations have negative affects on the region's ability to meet federal mandates to provide certain levels of stream flow to protect fish. Additional energy sources such as wind power or other renewable resources will help take pressure off the hydro system and better allow the State and region to meet our other environmental needs for fish.

109. Roughly 50 percent of all Pacific Northwest power is generated from hydroelectricity. This predominance of hydro is unique in the United States, and it provides the ideal mechanism through which to cost effectively integrate wind resources into the Northwest electrical system. This integration capability exists because hydro dams can temporarily ramp up their output, either within the hour or for one or two hours in advance, to meet temporary variations in wind energy production. This capability allows wind to be easily "firmed up" for serving retail loads, without having to build back up resources or use more expensive CCCTs for real time load following. Therefore, because Northwest integration costs are low, it is to the region's economic advantage to

maximize its available wind potential for electricity generation.

110. It is one of the best proposed projects in both in the county and the state and is capable of interconnecting to either the Bonneville Power Administration's or Puget Sound Energy's transmission system in a cost effective manner. It is also located closer to major load centers (e.g. the Puget Sound region) than most other proposed wind project sites. Finally, it is located in a completely different area than the vast majority of likely Northwest wind projects (i.e. the Columbia Gorge) and, therefore, can provide utilities with some resource diversity relative to their likely purchases from other wind projects.

111. The Council considered the Applicant's Second Request for Preemption and finds that the Applicant has complied with all provisions and requirements of WAC 463-28 and that the Council has given due consideration to the local community interests and governmental interest affected by the project and shall provide for such in the SCA. Specifically the Council finds that to the extent they are in conflict with the action herein, the local land use plans and ordinances of Kittitas County should be preempted by the Council pursuant to RCW 80.50.110 and WAC 463-28.

Project Description and Configuration

112. The Kittitas Valley Wind Power Project is a wind powered electrical generation facility in Kittitas County, Washington. The Project would consist of up to 65 wind turbine generators with a corresponding nameplate capacity depending on the type of turbine installed.

113. The Applicant analyzed and the Council considered the environmental impacts of three Project scenarios to capture possible Project impacts resulting from the selection of a turbine configuration within a range of turbine sizes identified in the Application.

114. Regardless of which size of turbine the Applicant finally selects for the Project, the turbines would generally be installed along the access roadways and all construction activities would occur within the corridors identified in the Application for Site Certification, with any final adjustments to specific turbine locations made to maintain adequate spacing between turbines for optimized energy efficiency and to compensate for local conditions.

115. The analysis performed in the EIS showed that, overall, the impacts from the various Project scenarios did not vary significantly from one to the next. No single scenario resulted in significant adverse environmental impacts to any element of the environment.

116. The Project would include access roads, turbine foundations, underground and overhead electrical collection system lines, a grid interconnection substation, step-up substation(s), feeder line(s) running from the on-site step-up substation(s) to the interconnection substation, meteorological stations, an operations and maintenance (O&M) center, an informational kiosk and associated supporting infrastructure and facilities.

117. The Council finds that the Project is to be constructed in accordance with the Application and the analysis performed in the Environmental Impact Statement, which presume a construction schedule of no more than one year. The Site Certification Agreement shall require the Applicant to complete construction of the entire Project within twelve (18) months from beginning construction. However, the Applicant will be permitted to operate and generate power from individual strings of turbines as they are completed, while the remaining strings of turbines remain under construction.

Site Characteristics

118. The Applicant is proposing to build the Kittitas Valley Wind Power Project, a renewable energy generation facility pursuant to the Lower End Scenario and within turbine corridors described in the ASC and further limiting itself to a maximum of 65 wind turbines. The Project will have a corresponding nameplate capacity depending on the type of turbine installed. The Project would be constructed in rural Kittitas County, on open ridge tops between Ellensburg and Cle Elum at a site located approximately 12 miles northwest of the city of Ellensburg. Approximately 6,000 acres of land is associated with the Project. Up to 371 acres would be temporarily disturbed by construction activities; a maximum of 118 acres would be permanently developed for placement of the turbine towers, access roads, substations, underground and overhead collection lines, and an operations and maintenance facility.

119. The majority of the Kittitas Valley Wind Power Project site and the proposed electric transmission interconnect points lie on privately owned lands. Parts of the Project site are owned by the Washington DNR, upon which the Applicant has secured a long term lease. The Applicant has obtained an option to lease the privately held portions of the Project site and options for

easements and/or purchase from the landowners necessary for installation and operation of the step up and interconnect substation.

120. The proposed site is located within Forest and Range and Agriculture-20 land use zoning designations in Kittitas County. The site has historically been used for grazing.

Air Quality

121. During construction, the types of direct impacts to air quality would be typical of those associated with any large construction project. The primary types of air pollution generated during Project construction will be emissions from vehicle and equipment exhaust, along with fugitive dust particles from travel on paved and unpaved surfaces.

122. Exhaust emissions and fugitive air emissions from construction sites are exempt from air emission permitting requirements. Exhaust emissions and fugitive air emissions resulting from travel on Project roads during operation of the Project are also exempt from air permitting requirements.

123. Operation of the Project will not result in any direct air emissions, and will result in less emissions to the extent the Project displaces fossil fuel sources of electrical energy production.

124. The Council finds that the Applicant's proposed mitigation measures are adequate to minimize fugitive dust impacts during construction and operation of the Project.

Water Resources

125. The Project is expected to require approximately two to 5 million gallons of water during construction. Water for construction will be purchased off-site from an authorized source, then delivered by truck to the Project site.

126. During construction, sanitary waste water will be collected in portable tanks, and disposed of off-site at locations permitted to accept such waste. For operations, a septic system will be installed at the operations and maintenance facility site in compliance with Washington State septic system requirements to treat the domestic-type sanitary waste water from the facility.

127. Wind energy facilities do not use water in the electrical generation process. There will be no operational use or discharge of water from the Project.

128. Water needs during operation will be minimal and primarily for bathroom and kitchen use at the O&M facility which is expected to be less than 1,000 gallons per day. Water will be obtained from an exempt well that will be installed by a licensed installer pursuant to Washington State Department of Ecology requirements.

129. Precipitation could result in surface runoff from Project facilities during Project construction and operation. However, the Project site grading plan and roadway design will incorporate measures in compliance with the Storm Water Pollution Prevention Plan (SWPPP) and Best Management Practices (BMPs) to ensure that surface runoff will infiltrate directly into the surface soils surrounding Project facilities. An operational SWPPP will be adopted and approved by EFSEC providing adequate BMP's for the operation of the Project.

130. The Council finds there would not be significant adverse impacts to water quality from the Project.

Habitat, Vegetation and Wetlands

131. The Applicant surveyed and mapped vegetation communities in the 6,000 acre Project area, and associated transmission feeder line corridors. The project is at the western edge of the Central Arid Steppe zone defined by the Washington State Gap Analysis. Vegetation communities within the KVWPP site consist primarily of sagebrush and grasslands. There are riparian zones along ravines and lithosols (shallow soils) communities along ridgetops. The higher portions of the project area border the ponderosa pine zone.

132. The Project would result in temporary vegetation community impact of approximately between 231 and 371 acres of which approximately 145 acres is shrub-steppe. Of the approximately 93 to 118 acres of permanent impacts, 45 acres would occur in shrub-steppe.

133. The Applicant proposed to mitigate all permanent and temporary impacts on vegetation in accordance with the WDFW Wind Project Habitat Mitigation Guidance Document (WDFW Wind Power Guidelines 2003). An approximately 539 acre mitigation parcel has been identified and purchased within the 6,000 acre Project area. The parcel would meet or exceed the required habitat replacement ratios under WDFW Wind Power Guidelines for any of the Project scenarios considered.

134. The Applicant would also implement Best Management Practices to minimize introduction of weeds, implement a noxious weed control program, and would develop and implement a

comprehensive post-construction restoration plan for temporarily disturbed areas, including habitat reseeding programs, in consultation with WDFW.

135. The Trenching Protocol adopted during the construction of the Wild Horse Wind Power Project, a copy of which is attached hereto, shall be utilized during the construction of this project and be included as part of the SCA.

136. Known populations of federally or state-listed endangered, threatened, proposed or candidate plant species have not been identified in the Project area, or the corridors where transmission feeder lines would be constructed. No impacts to protected plants are therefore expected to occur.

137. A wetland investigation was performed on the project site. Potentially jurisdictional wetlands or waters of the United States have been identified at ten locations within or adjacent to the Project area. At four of the locations, the Project design will keep Project developments away from streams and wetlands and avoid any impacts to waters of the United States. In six other locations, potentially jurisdictional streams (waters of the U.S) were identified where impacts cannot be reasonably avoided. At the present time the properties where stream crossings will be located are used for grazing. Three of the seven stream crossing locations have existing dirt or gravel trails adjacent to or crossing the stream. The total area of construction activities within jurisdictional waters (for all 7 crossings) will be approximately 1,270 square feet or 0.03 acres.

138. Potential direct impacts to wetlands and waters from the Project will result from construction of road and underground electric cable crossings of seven intermittent streams. The

streams involved in the seven crossings are all intermittent streams that do not provide fish habitat. All crossings are a minimum of one mile from any stream reaches that support fish. Construction is expected to occur while the streams are dry, and thus there should be no impacts to water quality or to water-dependent resources during the construction of the crossings.

139. The design of the crossings will allow the periodic stream flows to pass through the porous rock bases of the crossing without increasing erosion or turbidity. Each crossing will involve excavating just enough existing streambed material to allow for the placement of roadbed crossing material or electrical cables. All work will occur when flows are absent or well below 5 cfs. Backhoes will be used to remove existing streambed material. The excavated material will be spread on the shoulders of the new and widened roads. The new road crossings will be constructed of clean quarry rock and clean gravel excavated from the locations of project wind turbine foundations, or brought in from offsite sources. Electrical cables will be placed within the roadbed where feasible. Road crossings will be no wider than 34 feet in order to accommodate the construction equipment and transport trucks required to construct the wind turbine project.

140. The final profile and grade of each crossing will be as close to the original streambed as possible while providing a load-bearing surface that function as a ford crossing. All crossings will be constructed in compliance with the Project's construction stormwater NPDES permit and its erosion control plan, which will include erosion control details for stream crossings. The DOE Easter Washington Stormwater Manual, modified as appropriate for Kittitas County, will be used for guidance in development of the erosion control measures The total volume of materials

removed from jurisdictional waters will be approximately 47.1 cubic yards; the total amount of clean rock and gravel placed within the ordinary high water mark of jurisdictional waters will be 60.5 cubic yards

141. A comprehensive mitigation plan will be implemented for this Project. It consists of several categories of actions including BMP's and mitigation by preservation and enhancement of 8 acres of riparian land in the mitigation parcel described in ASC Sections 3.4.7.7-3.4.7.10.

142. A Joint Aquatic Resource Permit Application (JARPA) was prepared and submitted for this Project. The application was updated and supplementary information provided to the U.S. Army Corp of Engineers on February 11, 2004, and is presently valid through April 3, 2008.

143. That the Environmental Monitor for the construction of the Project be independent and hired directly by the Council. Further that the Environmental Monitor should be a qualified engineering firm (or a person associated with such firm) such as the engineering firm that ultimately became the Environmental Monitor at the Wild Horse Wind Power Project in the spring of 2006.

144. The Council finds that with the implementation of all mitigation measures proposed by the Applicant, the Project is not expected to result in significant adverse impacts on wetlands, vegetation, and habitat.

Fisheries and Wildlife

145. Given the lack of potential fish habitat for fish species with federal or state protected status within the Project area, no significant impacts on fisheries are anticipated to occur with the implementation of Best Management Practices (BMPs) and applicable stormwater permits that would control runoff, erosion and sedimentation into water bodies.

146. The Council finds that with the mitigation measures proposed, no significant adverse impacts are expected to occur on fish resources.

147. The Council finds that mitigation measures implemented by the Applicant to protect habitat, wetlands and vegetation, as described previously, will compensate for disturbance impacts to wildlife, including avian species, during construction and operation of the Project.

148. Based on the avian use studies conducted at this site, and the results of studies at other projects, approximately 2 to 3 bird fatalities per turbine (for the range of turbine sizes, which may be utilized for the Project) per year are anticipated. A variety of species may be found as fatalities, and no individual species are expected to account for a large proportion of the mortality. No impacts to individual species populations are anticipated. Actual rates may be lower or higher, but the majority of raptor fatalities are expected to be American kestrels and red-tailed hawks, two very common raptor species. These fatality rates, or even significantly higher fatality rates, would not be expected to have population level consequences for the likely species impacted.

149. The proposed design of the Project incorporates numerous features to avoid and/or minimize impacts to plants and wildlife, including: avoidance of construction in sensitive areas

such as streams, riparian zones, wetlands, forested areas, minimization of new road construction by improving and using existing roads and trails instead of constructing new roads; choice of underground (vs. overhead) electrical collection lines wherever feasible to minimize perching locations and electrocution hazards to birds; choice of turbines with low rotation speed and use of tubular towers to minimize risk of bird collision with turbine blades and towers; use of unguyed permanent meteorological towers to minimize potential for avian collisions with guy wires; equipping all overhead power lines with raptor perch guards to minimize risks to raptors; and spacing of all overhead power line conductors to minimize potential for raptor electrocution.

150. The Applicant conducted baseline monitoring and avian mortality analyses in conformance with WDFW's wind power guidelines. The Applicant coordinated extensively with WDFW and the Council's WDFW contractor, and addressed all of their concerns.

151. The Applicant shall develop a post-construction monitoring plan for the Project to quantify impacts to avian species and to assess the adequacy of mitigation measures implemented. The monitoring plan will include the following components: 1) fatality monitoring involving standardized carcass searches, scavenger removal trials, searcher efficiency trials, and reporting of incidental fatalities by maintenance personnel and others, for a period of two years after the beginning of Project operation; and 2) a minimum of one breeding season raptor nest survey of the study area and a one-mile buffer in order to locate and monitor active raptor nests potentially affected by the construction and operation of the Project. The protocol for the fatality monitoring study will be similar to protocols used at the Vansycle Wind Plant in northeastern Oregon, the Stateline Wind Plant in Washington and Oregon, and the Wild Horse Wind Power Project in Kittitas County, Washington.

152. The Applicant has proposed, and will be required to convene, a Technical Advisory Committee (TAC) to review pertinent monitoring and scientific data and to develop appropriate responses to impacts that exceed avian mortality projections made in the Application and EIS. The TAC will monitor all mitigation measures and efforts and examine information relevant to assessing Project impacts to habitat, avian and bat species, and other wildlife. The TAC will determine whether further mitigation measures would be appropriate, considering factors such as the species involved, the nature of the impact, monitoring trends, and new scientific findings regionally or at a nearby wind power facility. The TAC shall recommend mitigation measures to the Council; the ultimate authority to implement additional mitigation measures, including any recommended by the TAC, will reside with EFSEC.

153. The Applicant generated a list of state and federally protected species that potentially occur within the Project area to assess the potential for impacts on these species. Species were identified based on the WDFW Species of Concern list, which includes state listed endangered, threatened, sensitive, and candidate species; and the U.S. Fish and Wildlife Service (USFWS), Central Washington Ecological Services Office list of Endangered, Threatened, Proposed, Candidate and Species of Concern for Kittitas County, and consultation with the USFWS. Based on the habitat attributes present on the Project site and the habitats with which these species are associated, only bald eagle have the potential to occur within the Project site. No threatened or endangered fish species are found on site, and no impacts to such species are expected from the project. Although estimated to be small, there is some likelihood of bald eagle mortality during the life of the project. The Applicant, under section 10 of the ESA, has developed a Habitat Conservation Plan (HCP) to acquire an incidental take permit for possible take of bald eagles and has submitted it to USFWS.

Section 10 of the ESA provides a means for private (non-federal) entities to acquire a permit for incidental take of listed species due to an otherwise lawful activity

154. The Council finds that the studies and mitigation measures implemented by the Applicant to protect habitat, wildlife and unique and protected species as described above, are consistent with the WDFW Wind Power Guidelines and provide adequate protection to the resources. The Project will result in no significant unavoidable adverse impacts to wildlife.

Noise

155. The Project shall be designed and comply with applicable Washington State Environmental Noise Levels of Chapter 173-60 WAC.

156. Due to the rural nature of the site, the Council finds no significant noise impacts from construction or operation of the Project.

Geological Hazards

157. There are no significant impacts on soil, topography, and geology resulting from construction of the Project. Risks associated with ground movements due to landslides, subsidence, expansive soils or similar geological phenomena are minimal; no special design or construction considerations are recommended or required.

158. Historically, the region has a low level of seismicity. Local crustal faults are not considered to pose a significant earthquake hazard to the proposed Project. Even so, Project buildings, structures, and associated systems shall be designed and constructed consistent with

requirements, including seismic standards, of the Uniform Building Code (UBC) or the International Building Code (IBC), but no less stringent than those found in the Uniform Building Code of 1997.

159. The Project site is on or near ridgelines located above 3,000 feet in elevation and far above any floodplain, eliminating any risk of flooding.

Traffic and Transportation

160. Construction of the Project will result in a short-term increase of traffic in the local area. Operation of the Project will have no significant impact on local traffic patterns.

161. The Applicant's Traffic Mitigation Plan will adequately mitigate all adverse impacts identified in the FEIS. The Plan will include documentation of pavement conditions before construction begins, allowing Kittitas County to monitor any road deterioration associated with the Project. The Applicant will repair any such road damage.

162. The Applicant has agreed to the following further mitigation responding to local County concerns;

Project Access Roads. Access to the various rows of turbines will be achieved via graveled access roads branching from state highways 10 and 97 and County roads Bettas and Hayward Roads.

Access roads from state highways 10 and 97 shall be constructed with slope and culverts designed according to WSDOT and Washington state access management standards under Title 468 WAC and Chapter 47.50 RCW. Access from County roads shall be constructed with the appropriate slopes and culverts in accordance with Kittitas County standards. Project site roads shall be designed in accordance with Table 12-1 of the Kittitas County Road Standards for Private Roads with Low Density Traffic. In locations where road grades exceed the County's 12% maximum road grade, the roads shall be designed to ensure that fire vehicles can gain access to the site as necessary to provide emergency services.

County roads, including shoulder pavement, shall be video monitored before and after construction of the Project to identify road degradation. Bettas Road that will be used for Project construction and operations (approximately 1.4 miles from state highway 97 to Hayward Hill Road) will be improved, following construction, to the current Kittitas County road standards applicable to this section of road.

That portion of Hayward Hill Road that will be used for Project construction and operations (approximately 1.4 miles) will be improved, to a 22-foot gravel road, from Bettas Road to the access road for turbine string B. If construction of the Project results in the degradation of the existing pavement and/or shoulders on the County roads other than Bettas and Hayward Hill Roads, Applicant shall reinstate these roads to as near the condition they were in prior to construction.

Applicant will construct a visitor's kiosk and public viewing area near the proposed O&M facility off Bettas road with adequate signage directing the public to a safe parking lot to view and learn about the Project

Applicant shall monitor traffic levels following completion of construction of the Project for a period of three years. After that time, Applicant shall continue monitoring of tourist and operations traffic to the Project upon written request from the EFSEC. Should tourist and operations related traffic to and from the Project site exceed WSDOT warrants, as contained in Chapter 910 of the WSDOT Design Manual, the Applicant shall construct right and/or left turn lanes on SR 97.Said improvements shall be designed and constructed in accordance with WSDOT guidelines.

Project Site Access. Project access roads run across both private and public (WDNR) lands. In order to avoid and minimize potential impacts to recreation on public lands the Applicant will implement an adaptive management approach to allow access to and through the Project Area to access public lands for recreational purposes. Adaptive management allows for changes over time to the level of control and types of activities on the Project site, as needed. In general, the Applicant will permit controlled access to and through the site to public lands, as long it does not interfere with or introduce adverse impacts on Project operations or personnel. At a minimum, Project site access during operation shall be allowed as follows:

- Private property owners who wish to access their property from Project Access Roads will be allowed to do so as necessary under a formal access license and a key to a gated entrance.

- Officials of the Washington State Departments of Natural Resources are currently allowed to access the Project site and will continue to be allowed access by key.
- The Applicant will allow others to access the Project site on a case-by-case basis. Active recreation activities such as camping and off-road vehicle usage will not be allowed on the Project site in order to avoid and minimize potential impacts to habitat and wildlife from such activities.

163. The FAA has reviewed plans for the proposed project to determine if it has the potential to interfere with local air traffic operations and issued "Determinations of No Hazard to Air Navigation. The FAA issued separate no hazard determinations for each proposed wind power and meteorological tower using two types of determinations: one type concluded that the tower would not require lighting, the second type concluded that it did. FAA Determination of Non Hazard certificates which were approved on June 10, 2004 and released for the Project in August, 2004 confirm that the Project does not interfere with any of the current IFR flight approaches for the Bowers Field Airport Applicant shall provide Determination of Non Hazard certificates issued by the Federal Aviation Administration (FAA) and related information to the Director, which demonstrates that the Project will not impact approved flight approaches, flight communications, or operations at the Bowers Field Airport in Ellensburg prior to construction

159. The Council finds that the Applicant's proposed mitigation measures will appropriately mitigate construction traffic and air navigation impacts..

Cultural and Archeological Resources

164. A cultural resources evaluation was implemented to identify and assess any potential impact on cultural resources located within the Kittitas Valley Wind Power Project area. These resources include previously recorded or yet undocumented historic, cultural and archaeological resources as well as traditional cultural properties. RCW 27.53.060 provides protection of cultural resources on private and public lands in the state of Washington. To determine if the Project area contains any significant cultural deposits, an extensive and systematic on-ground cultural resource survey was conducted of the proposed wind power project location. In addition, an archival file and literature research was conducted of all documentation relevant to the project area. A summary of the documentation relevant to the archaeology, prehistory and history of the general area is included in the Application for Site Certification. The survey identified two previously unrecorded prehistoric archaeological sites, both of which are lithic scatters. Both sites will be avoided during all phases of construction to prevent damage. The proposed project area was also surveyed to locate any historic buildings or other resources over 50 years of age. The archival and literature search included a search for historic resources. No historic resources over 50 years of age were noted within the Project area. The North Branch Canal (NRHP eligible) is located just outside the Project area. The North Branch Canal will be avoided by the Project and will not be affected by the Project. The study results of the survey are included in the Application for Site Certification. The Applicant consulted with and cooperated with the Yakama Nation regarding its evaluation.

165. The Council finds that with implementation of these mitigation measures no impacts on identified culturally sensitive areas would occur under any of the proposed scenarios. Operation of

the Project would not impact any of the archaeological or historical sites identified during this current cultural resource survey.

166. The Applicant proposes to maintain 100-foot design and construction buffers around the archaeological sites identified during this current cultural resource survey, even though the sites do not meet the standard qualifications for the National Register of Historic Places (NRHP). Ground disturbing actions within a specified radius of any archaeological sites, either recorded during the initial survey or previously documented, would be monitored by a professional archaeologist to prevent damage or destruction to both known and unanticipated archaeological resources.

167. The Applicant, in consultation with the Office of Archeology and Historic Preservation (OAHP), will develop a cultural resources monitoring plan for monitoring construction activities and responding to the discovery of archeological artifacts or buried human remains.

168. The Council finds that with implementation of these mitigation measures no impacts on known culturally sensitive areas would occur under any of the proposed scenarios. Operation of the Project would not impact any of the archaeological or historical sites identified during this current cultural resource survey.

Visual Resources/Light and Glare

169. The Applicant's visual simulations of the Project demonstrated existing conditions together with the expected post-construction images from a variety of viewpoints, allowing the Council to contemplate a computer model of the completed wind farm.

170. The Council recognizes that evaluation of visual impacts of wind farms is potentially controversial. Visual impact assessment based on evaluation of the changes to the existing visual resources that would result from construction, operation, and decommissioning of the Project can be conducted scientifically. However, assessing actual impact on existing aesthetics remains largely a matter of individual taste and opinion.

171. The Applicant hired qualified experts to carry out an extensive visual and aesthetic impact analysis which was based primarily on the widely accepted Federal Highway Administration methodology for determining visual resource change and assessing viewer response to that change. The Applicant's expert used the photomontage module of the WindPro software program to create "before and after" visual simulation images to show the proposed Project from six simulation viewpoints (SVs) selected to be representative of views toward the Project from a range of locations, superimposing computer-rendered three-dimensional wind turbines on photographs of existing conditions. Levels of visual impact were classified as high, moderate, and low. The Applicant's analysis and the Council's DEIS found that the overall visual impact of the Project would be low to moderate.

172. In the fall of 2005 the Applicant carried out an additional visual and aesthetic impact analysis of the reconfigured Project using the same method of analysis and techniques described in the original Opening Statement. The analysis of the revised Project layout, with a reduced number of turbines which was included in the Addendum to the DEIS, included most of the viewpoints evaluated in the original Project DEIS. The analysis concluded that the Project's reconfigured layout reduced the impacts at many of these view points from "substantial" to "moderate". When given an opportunity to provide comments to the DEIS Addendum, Kittitas County's "SEPA

official" did not provide written or verbal comments taking issue with EFSEC methodology of analysis or determination

173. In early June 2006, Kittitas County made its final decision regarding County approval of the Kittitas Valley Wind Power Project. Generally the County concurred with the analysis and conclusions that the project will not have significant adverse visual impacts. (April 12, 2006 Hearing Transcript, p. 24-26) However the County disagreed with this analysis regarding aesthetic impacts to nonparticipating residences within 2,500 feet of turbines. This issue was raised toward the end of the County's land use consistency process. The County did not raise this issue during the environmental review process.

174. The County's analysis was not based on the use of accepted visual assessment protocols that are commonly used by state and federal agencies. The County misconstrued the treatment of the issue of visual sensitivity as it was presented in the original visual assessment in the ASC, and as it was repeated in the DEIS and Addendum thereto. As a part of the process of assessing the aesthetic impacts of potential change to the landscape, as detailed in the DEIS and the Addendum as well as in testimony, the standard professional approach is to document the existing visual character and quality of the landscape and its sensitivity to potential visual change. Sensitivity to visual change is usually evaluated in terms of the numbers and types of viewers in the area. Residential and certain kinds of recreational viewers are usually assumed to be the most potentially sensitive to visual alterations of the landscape. In the case of this Project, a high degree of sensitivity was assigned to residences located within the foreground zone (up to ½ mile) of the proposed turbines. Visual sensitivity is not the same as visual impact, but instead is only one of the considerations that go into the final determination of impact. In determining potential impacts of

proposed projects, professionally accepted assessment techniques take into account a range of factors, including the degree of visibility of the new feature, the degree and nature of the visual change created, the effects on the visual character and quality of the view, and the sensitivity of the viewers. The County was incorrect to assume that the level of viewer sensitivity translated directly to the level of visual impact.

175. The County mischaracterized aesthetic analyses used in the EIS process. The County took the findings that those analyses described as "moderate to high" and has misrepresented those findings as findings of "high" impacts. The County then asserted that a "high" impact is a "significant adverse environmental impact." This assertion was made without detailed analysis or any reference to the criteria used to establish the significance of impacts under SEPA. That assertion is not based on the analysis of the EFSEC DEIS and the Addendum and the thereto and FEIS. The County further criticized the Applicant and EFSEC's DEIS and DEIS Addendum for not preparing visual simulations from every residence near the Project. While such analysis is not routine or generally considered acceptable, the County's SEPA official did not provide this comment or critique to EFSEC during the EIS comment period. Further, while alleging that the visual simulation methodology was superior in the County's EIS for the enXco Desert Claim project, in cross examination, the County's SEPA official (Darryl Piercy) admitted that the County itself did not require or prepare such visual simulations for the Desert Claim project.

176. Because of its confusion between level of viewer sensitivity and level of visual impact, the County concluded that all turbines must be set back 2,500 feet from residences

177. The Applicant believed its prior analysis and that of the DEIS and Addendum thereto, about which the County made no comment, were adequate. This was primarily because of the rural nature of the area and the small numbers of residences in proximity to the project, especially in light of the terrain, which restricts the views of the proposed turbines from many locations. However in response to the County's 2,500 foot setback from non-participating residences raised at the end of their process and used to deny the project, the Applicant made a thorough investigation of the residences located within 2,500 feet of proposed turbines. This investigation included a close review of maps created using a geographic information system (GIS), and both on-the-ground and helicopter-based field reconnaissance. This study was based on a 410-foot maximum turbine tip height used in the DEIS.

178. By insisting without an objective basis, that all turbines be set back 2,500 feet from houses to mitigate for a perceived "looming" visual impact, the County placed arbitrary restrictions on turbines sited in areas where they would have relatively little impact on residential views. The effect on the views to houses with turbines within 2,500 feet was not as stated by the County. Instead of the 20-plus houses the County assumed to be affected and within a half-mile from proposed turbines (*see* County Resolution No. 2006-90, Finding No. 20; May 3, 2006 County Hearing, TR p. 10, line 24) only 16 homes are within 2,500 feet of proposed turbines. Eleven residences would actually have other than an insignificant view at the most, due topography and screening. Of these eleven houses, the primary viewshed of all but one is not towards the turbines within 2,500. Further, as stated in both the technical analysis and related testimony presented by the Applicant, the view of the turbines ceases to dominate ("loom") at as distance from the observer of about four times the height of the structure. The degree to which visual impacts are adverse significantly depend on the viewer's location and sensitivity and the impact on view

quality. Because of the fact that the primary viewsheds of houses that can actually see the turbines within 2,500 feet are overwhelmingly away from or not directly towards the turbines and because most of the turbines are located in "Zone 3", as described in Dr. Priestley's supplemental testimony, the visual impacts related to "looming", using a 1320 foot setback on this project are less than significant. For projects like the Kittitas Valley Wind Power Project, whose siting and design have shaped and minimized its overall visual impacts, any visual impact that might be identified as affecting small numbers of viewers must be evaluated in the context of the fact, that on the whole, the Project's visual impacts are relatively low.

179. The Applicant's analysis and the DEIS and Addendum thereto concluded that the visual impact of the Project would not constitute significant impacts because of the low to moderate levels of sensitivity of the affected views. Moreover as the SEPA lead agency it is appropriate and necessary for EFSEC to balance the moderate impact to a handful of residences against the overwhelming public benefit of the Kittitas Valley Wind Power Project.

180. Neither glare nor "shadow flicker" pose hazards with this Project (see below). Further, the turbine towers will not add significant ambient light to their immediate surroundings; however, similar to the Wild Horse Wind Power Project, approximately 18 turbines will be marked with flashing warning lights required by the Federal Aviation Administration to alert aircraft to their presence.

181. After all mitigation measures are implemented, the visual impact of this Project would be low to moderate, with no significant adverse impacts on the existing visual environment.

Health and Safety

182. Because the Project site is generally arid rangeland with a predominant groundcover of grasses and sagebrush, the risk of fire during the hot, dry summer season is a primary health and safety concern associated with the proposed Project.

183. To mitigate the fire risk the Applicant will comply with electrical design that complies with the National Electric Code (NEC). The Project site roads will act as firebreaks and also allow for quick access of fire trucks and personnel in the event of a grass fire. The Applicant has entered into a fire protection contract with Ellensburg Rural Fire District #1. The Applicant will also prepare a fire control plan and an emergency plan, coordinated with local and state agencies to ensure efficient response to emergency situations.

184. Construction and operation of the Project would require the use of hazardous materials such as: diesel and gasoline fuels for operating construction equipment and vehicles; lubricating oils; transformer mineral oils; and cooling, lubricating and hydraulic fluids used in the turbines. The Applicant has proposed various supply and storage mechanisms depending on the type of fluid being handled.

185. The Applicant has proposed mitigation measures to prevent or control the occurrence of spills on site during construction and operation of the Project, including appropriate handling and storage facilities for the fluids of concern, and facility design to include sensors for fluid leaks as appropriate. In addition, the Applicant will be required to develop a Spill Prevention Control and Countermeasures Plan for both construction and operation phases of the Project.

186. Construction and operation of the Project will not result in the generation of any hazardous wastes in quantities regulated by state or federal law.

187. The probability of a wind turbine at the proposed project killing or seriously injuring a member of the public as a result of blade throw, tower collapse or ice throw is less than 1 in 1 billion. The potential public health and safety risks posed by this project are insignificant and less than the risks posed by other common energy generating technologies and countless other common activities. There has been no reported injury from ice thrown from wind turbines. Tower collapse is extremely rare and highly unlikely. A minimum safety setback of 541 feet from residences and tip height from public roads and transmission lines, incorporated into the proposed Project layout would reduce the safety risks associated with ice throw, tower collapse and other safety or nuisance issues.

188. There are no documented human or animal health impacts associated with shadow flicker from wind turbines The Project will not produce shadow-flicker effects on any existing residences within 2,500 feet of turbine. Due to the significant reductions in the number of wind turbines as well as the increase in setbacks from neighboring residences, the potential for shadow flicker effects on neighbors has been dramatically reduced. A detailed report prepared by Arne Nielsen of Wind Engineers was prepared to analyze shadow flicker and was submitted to EFSEC and the County in October 2005. This analysis was a worst case analysis of all structures in the area. Because of the extreme assumptions the actual impact will be considerably less. Further as shown in the testimony of Dr. Tom Priestley many of the houses within 2,500 feet of a turbine are significantly screened from its view and many of the houses that are not screened are oriented away from the turbine. Therefore any actual effect will be less than as modeled. Based on this detailed analysis, the Applicant does not

expect the nonparticipating residences to be significantly adversely impacted by shadow flicker. However in the unlikely event that the modeling results are shown later to be inaccurate, and some residences are significantly adversely impacted by shadow flicker, the Applicant has continually stated that it is willing and able to mitigate by programming the offending turbines to shutdown during those specific times that significant shadow flicker occurs.

189. The Applicant stipulated that it will institute the turbine shut down measure to all existing residences of non participating landowners within 2,500 feet of a turbine that have a line of sight view (view of turbine not blocked by topography and/or vegetation) from the residence to that turbine, upon request of the non participating land owner.

190. With the mitigation measures provided, the Council finds that the Project will not cause a significant adverse health and safety impact.

Socioeconomics

191. Project construction and operation will result in increased employment in Kittitas County, with approximately one-half of all construction-related jobs expected to be created within Kittitas and Yakima counties.

192. The Project will generate total direct income of approximately $5,814,500 during the construction phase. Additional indirect and induced income of approximately $4,335,600 is also anticipated during construction of the Project. Thus the total direct and indirect income resulting from the Project's construction is projected at $10,150,100.

193. Adequate local housing supplies exist to accommodate the Project's demand for temporary rental housing.

194. Based on the evaluation of the proposed wind power facility and a review of the levy rates in the 2005-2006 Kittitas County Assessor's Report, it has been estimated that new property tax revenues will equal approximately $1,508,325 in the first year of operation (this amount will gradually decrease as the turbines depreciate over time). For this calculation the complete wind farm project was valued at $190,000,000. For comparison, property tax revenues from all sources in Kittitas County totaled $33,198,898 for the 2005-2006 budget year. The expected increase in property tax revenues due to the wind farm amounts to an increase of 5 percent over these levels. In addition, approximately 16 turbines are expected to be built on land managed by the Washington Department of Natural Resources (DNR) rather than on private land. For these turbines, a rental fee for land will be paid to the State, which then returns these funds to schools throughout the state based on district need. For the first 10 years of the project, the annual rental rate is estimated to be $9,429 per turbine, amounting to an additional $150,864 annually for the DNR. These payments then increase and eventually reach an estimated $20,744 per turbine after 25 years, resulting in $331,904 in revenue to the DNR.

195. The relatively remote and rural location of the Project site greatly diminishes the potential for negative impacts to residential property values. Based upon a review of all evidence contained in the record, the Council finds that construction and operation of the Kittitas Valley Wind Power Project will not have any significant negative impact on property values in Kittitas County. (Ex. 36 (PBD-T), (Ex. 36 SUP (PBD-T SUP)), (Ex, 36 SUP REB (PBD-T SUP REB))

Public Services

196. The Project is not anticipated to have a significant adverse effect on any public services, including law enforcement, fire, water, medical, recreational, or schools.

193. The Project will not have any significant adverse impact on communication facilities or services in the area (*see* FEIS, page 1-36).

Site Restoration

197. In accordance with WAC 463-42-655 (as in effect in January 2003) the Applicant prepared an initial site restoration plan in the Application and that addresses site restoration. At the end of the useful life of the facility, the equipment will be removed and the entire area returned to as near its original condition as reasonably possible.

198. Prior to initiating construction activities, the Applicant must provide sufficient financial assurance to ensure complete decommissioning of the Project.

Decommissioning Plan. Prior to construction of the Project, Applicant shall provide to EFSEC, a Project decommissioning and site restoration plan (the "Plan") as required under WAC 463-42-655, prepared in sufficient detail to identify, evaluate, and resolve all major environmental, and public health and safety issues reasonably anticipated by the Applicant on the date hereof. The Plan shall describe the process used to evaluate the options and select the measures that will be taken to restore or preserve the Project site or otherwise protect the public against risks or danger resulting from the Project. The Plan shall include a discussion of economic factors regarding the costs and benefits of various restoration

options versus the relative public risk and shall address provisions for funding or bonding arrangements to meet the Project site restoration or management costs. The Plan shall be prepared in detail commensurate with the time until site restoration is to begin. The scope of proposed monitoring shall be addressed in the Plan.

Decommissioning Scope and Timing. Applicant or any Transferee, as the case may be, shall commence decommission the decommissioning of the Project within twelve (12) months the date of termination of this Agreement.

Decommissioning the Project shall involve removal of the Turbines; removal of foundations to a depth of 3 feet below grade; removal of overhead cables, re-grading the areas around the Project Facilities; removal of Project access roads and overhead cables (except for any roads, facilities, structures and/or power cables that Project Area landowners wish to retain); and final reseeding of disturbed lands (all of which shall comprise "Decommissioning"). Decommissioning shall occur in the order of removing the Turbines as the first priority and performing the remaining elements immediately thereafter.

Decommissioning Funding and Surety. Except as provided below, Applicant or any Transferee, as the case may be, shall provide security sufficient for Decommissioning costs in the form of a performance bond, guaranty or a letter of credit to ensure the availability of funds for such costs (the "Decommissioning Security") to EFSEC. The Decommissioning Plan shall provide that the Decommissioning costs shall be reevaluated annually during construction of the Project and once every five (5) years thereafter from the date of

Substantial Completion to ensure sufficient funds for Decommissioning and, if the parties agree at that time that the Decommissioning costs need to be modified, the amount of the Decommissioning Security shall be adjusted accordingly, based upon the original agreed upon Decommissioning Plan scope of work. The Applicant shall be required to provide such security within 30 business days of Substantial Completion. On or before the date on which the Decommissioning Security must be established, the Applicant or any Transferee, as the case may be, shall provide, at its election, one of the following:

Performance Bond. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a Performance Bond issued by a surety registered with the Washington State Insurance Commissioner and which is, at the time of delivery of the bond, on the authorized insurance provider list published by the Insurance Commissioner. The Performance Bond shall be in an amount equal to the Decommissioning costs. The Performance Bond shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. In order to ensure continuous renewal of the Performance Bond with no lapse, each Performance Bond shall be required to be extended or replaced at least one month in advance of its expiration date. Failure to secure such renewal or extension shall constitute a default of the Applicant under this Agreement and under the Bond provisions.; or

Letter of Credit. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations through a letter of credit

issued by a bank whose long-term debt is rated "A" or better by a Rating Service. The letter of credit shall be in an amount equal to the Decommissioning costs. The letter of credit shall be for a term of 1 year, shall be continuously renewed, extended, or replaced so that it remains in effect for the remaining term of this Development Agreement or until the secured decommissioning obligations are satisfied, whichever occurs sooner. The State of Washington, by and through EFSEC or its successor or designees shall be authorized under the letter of credit to make one or more sight drawings thereon upon certification to the issuing bank of the Applicant's or Transferee's (as the case may be) failure to perform its decommissioning obligations when due; or

Guaranty. Applicant or any Transferee, as the case may be, shall provide financial security for the performance of its decommissioning obligations by delivering a payment guaranty guaranteeing its Decommissioning obligations hereunder from an entity (i) having, at the time of delivery of such guaranty, a senior unsecured long term debt rating ("Credit Rating") of (1) if such entity has a Credit Rating from Standard and Poor's but not from Moody's, BBB- or better from Standard and Poor's or (2) if such entity has a Credit Rating from Moody's but not from Standard and Poor's, Baa3 or better from Moody's or (3) if such entity has a Credit Rating from both Standard and Poor's and Moody's, BBB- or better from Standard and Poor's and Baa3 or better from Moody's; or (ii) having audited financial statements, prepared by a nationally-recognized firm of independent auditors and indicating a financial net worth of at least $75,000,000

Financial Security and Utility Project Ownership. Applicant or any Transferee, as the case may be, shall provide the Decommissioning Security for the performance of its Decommissioning obligations arising hereunder unless if, at the time the duty to provide

Decommissioning security arises as provided above, the owner of the Project is an investor-owned electric utility regulated by the FERC and the Washington Utilities and Transportation Commission (WUTC), in which case the obligation to fully decommission the Project when due shall be a general obligation of the investor-owned electric utility owner.

Cumulative Impacts

199. Potential cumulative impacts of the development of the Wild Horse, Desert Claim and Kittitas Valley wind power projects, as well as other economic and residential growth in Kittitas County, were considered. With the exception of visual impacts, the construction of the Project, in conjunction with other development actions, is not expected to result in significant adverse cumulative impacts, because such impacts are either not expected to occur, or mitigation measures shall be employed to reduce the impacts of individual development.

200. A single cumulative impact involving development of all three wind power projects was identified with respect to visual resources: the impact of repetitive views of turbines in the County for residents and frequent visitors to the Valley could result in the impression of change in the overall visual character of the Kittitas Valley landscape.

Term of the Site Certification Agreement

201. The Site Certification Agreement will authorize the Certificate Holder to construct the Project such that substantial completion is achieved no later than five (5) years from the date that all state and federal permits necessary to construct the Project are obtained.

202. Construction of the entire Project shall be completed within approximately eighteen (18) months of beginning construction.

Conformance with Law

203. The Applicant proposes to construct the Project in accordance with applicable national and international building codes, in compliance with international design and construction standards, and including the implementation of a comprehensive employee safety plan. The Council finds that operational safeguards will be at least as stringent as the criteria established by the federal government and will be technically sufficient for welfare and protection of the public. RCW 80.50.010 (1).

204. The Applicant has agreed to appropriate environmental mitigation requirements. The mitigation package preserves and protects the quality of the environment. As a renewable energy resource, the Project will enhance the public's opportunity to enjoy the aesthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment. RCW 80.50.010 (2).

205. As a renewable energy source wind power generation facility, the Project will contribute to the diversification and reliability of the state's electrical generation capacity, and will therefore support legislative intent to provide abundant energy at a reasonable cost. RCW 80.50.010 (3)

206. The Council finds that this course of action will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the testimony received, and evidence admitted during the adjudicative and land use hearings, the environmental documents and environmental determinations made by the Council, in this matter, the Council makes the following Conclusions of Law:

1. The Washington State Energy Facility Site Evaluation Council has jurisdiction over the persons and the subject matter of Application No. 2003-01, pursuant to Chapter 80.50 RCW and Chapter 34.05 RCW.

2. The Council conducted its review of the Sagebrush Application 2003-01 as adjudicative proceedings and land use hearings, pursuant to Chapter 34.05 RCW as required by RCW 80.50.090(3) and Chapter 463-30 WAC (as in effect at the time of application).

3. EFSEC is the lead agency for environmental review of Sagebrush's Application pursuant to the requirements of Chapter 43.21C RCW. Because the SEPA responsible official determined that the proposed action could have one or more significant adverse environmental impacts, an Environmental Impact Statement (EIS) was required. The Council complied with Chapter 43.21C RCW, Chapter 197-11 WAC, and Chapter 463-47 WAC, by issuing a Determination of Significance and Scoping Notice, conducting a scoping hearing, issuing a Draft EIS for public comment, conducting a public hearing and accepting written comments on the Draft EIS, issuing a Supplemental DEIS and conducting a public hearing and accepting written comments on the Supplemental DEIS, issuing an Addendum to the DEIS and adopting a Final EIS.

4. The Council is required to determine whether a proposed Project site is consistent with county or regional land use plans or zoning ordinances. RCW 80.50.090; WAC 463-14-030. The Council concludes that the proposed use of the site is not consistent and in compliance with all applicable Kittitas County land use plans and zoning laws. The project is deemed inconsistent with local land use plans and zoning ordinances because Kitttitas County failed to grant the Applicant a wind farm overlay zone approval. However, with exception to the goals and policies and zoning provisions relating to the wind farm overlay ordinance and process, the project is not inconsistent with the goals and policies of the Kittitas County Comprehensive Plan or the underlying zoning designations. Wind energy facilities are considered to be compatible with rural, agricultural and natural resource zoning districts, and are compatible with the goals and policies in the GMA as well as those within the Kittitas County Comprehensive Plan related land uses encouraged and allowed in such rural, agricultural and natural resource. The Applicant has complied with all provisions and requirements of WAC 463-28, and that the Council has given due consideration to the local community interests and governmental interest affected by the project and shall provide for such in the SCA. Specifically, to the extent they are inconsistent with this Order, the Council recommends that the Governor preempt the local land use plans and ordinances of Kittitas County pursuant to RCW 80.50.110 and WAC 463-28.

5. The legislature has recognized that the selection of sites for new large energy facilities will have a significant impact upon the welfare of the population, the location and growth of industry, and the use of the natural resources of the state. It is the policy of the state of Washington to recognize the pressing need for increased energy facilities and to ensure through available and reasonable methods that the location and operation of such facilities will produce minimal adverse

effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life. RCW 80.50.010.

6. The Council concludes that the certification of the Kittitas Valley Wind Power Project, as described in Application 2003-01, and with the inclusion of the requirements of the settlement agreements, will further the legislative intent to provide abundant energy at reasonable cost. At the same time, the mitigation measures and the conditions of the proposed Site Certification Agreement ensure that through available and reasonable methods, the construction and operation of the Project will produce minimal adverse effects to the environment, the ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

ORDER AND RECOMMENDATION

Based on the Findings of Fact, Conclusions of Law, the Draft EIS and Final EIS, and the full record in this matter, the Council issues the following Order:

1. The Council recommends that the Governor of the state of Washington APPROVE certification for the construction and operation of the Kittitas Valley Wind Power Project located in Kittitas County, Washington.

2. The Council orders that its recommendations as embodied in the Findings of Fact, Conclusions of Law and this Order, together with the Site Certification Agreement appended hereto, be reported and forwarded to the Governor of the state of Washington for consideration and action.

SIGNATURES

DATED and effective at Olympia, Washington, this _____ day of_____, 2006.

_____
James Oliver Luce, Chair

Richard Fryhling, Department of Community, Trade and Economic Development	Hedia Adelsman, Department of Ecology
Chris Towne, Department of Fish and Wildlife	Judy Wilson., Department of Natural Resources
Tim Sweeney, Utilities and Transportation Commission	Patti Johnson, Kittitas County

NOTICE TO PARTIES: Administrative relief may be available through a petition for reconsideration, filed within twelve days of the service of this order, filed with the Council Manager pursuant to WAC 463-30-120.

RES
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August 16, 2006

Underground Cable Trenches – Construction Practices

The following memo has been prepared to document the methodology employed to install the electrical collection system at the Wild Horse Wind Project. It includes a description of the process, a graphic depiction of the typical installation and a photo array of current implementation of these procedures showing the outcome.

This memo serves to provide a series of practicable alternative approaches for the remaining trench system installation which will allow an acceptable schedule and cost outcome for the construction effort while meeting the project goals of minimizing negative impacts to the local environment. The soil conditions at the site are highly variable, ranging to solid basalt outcroppings to deep soil. The variability requires a flexible approach with a number of processes utilized to achieve the goal of a trench which can accommodate the design criteria. Accordingly, there is no single solution to the problem statement. By providing several processes which are individually suitable to achieve the desired ends in specific conditions, the trenching can be done in an efficient, workmanlike manner.

Two basic factors drive the chosen approach to trench installation, the capabilities and limitations of the trenching equipment and the soil conditions. The first, the equipment limitations are the result of the high center of gravity of the trencher and the inability to slew the toothed digging belt. That is, if the machine is tilted to the side, the resulting trench will also be tilted. The unacceptable trench configuration and the safety of the equipment means the operating trencher should have as level and smooth a surface as possible. If the surface is naturally level and reasonably even, the need to scrape the surface is unnecessary. However, if large cobbles or an inclined surface is encountered, it will be necessary to blade off the surface to provide a suitable workplace. The decision to level the surface with a blade is an ad hoc process based on the operator's expertise and the characteristics of the machine. The incentives to avoid the additional work and time will favor opting out of the blading process whenever possible.

The desired outcome of the trench installation and restoration is to provide a surface which appears as reasonably similar as possible to the undisturbed surface in the vicinity of the trench route. By following the process outlined in this document, the organic materials (compost, seeds, plant material, etc.) will be retained and placed on the surface of the completed installation to the greatest extent possible using good construction practice.

The following four scenarios cover most of the conditions encountered. The process of completing the trench installation, filling, cover and finish have been developed by reviewing the contract specifications, discussing the process with the various contractors involved and through personal observation. The various processes have been distilled to the following:

1. **Single Trench at Roadside:**
    a. Soft soil – the trenching operation will be as follows:
        i. Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side opposite to shoulder of road.
        ii. Trencher runs down prepared surface, full depth, spoil on side opposite to shoulder of road in windrow.
        iii. Thermo fill bedding, cables, thermo fill cover installed
        iv. Windrowed topsoil and trench spoil bladed back into trench and compacted. Trench spoil precedes topsoil into trench.
        v. Excess topsoil mix spread into low mound over trench.
    b. Rocky soil – the trenching operation will be as follows:
        i. Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side opposite to shoulder of road.
        ii. Trencher runs down prepared surface, full depth, spoil on side opposite to shoulder of road in windrow.
        iii. Thermo fill bedding, cables, thermo fill cover installed
        iv. Windrowed topsoil and trench spoil bladed back into trench and compacted. Trench spoil precedes topsoil into trench.
        v. Excess spoil spread on trench array in a low crown.
    c. Very rocky/solid rock - the trenching operation will be as follows:
        i. Surface drilled for blasting process
        ii. Trench line blasted
        iii. Trench cleared with track hoe; spoil placed on side opposite to shoulder of road
        iv. Trench completed as in 1.b.iii - .iv (Above).
        v. Excess large rock spoil hauled to disposal.

2. **Multiple Trenches at Roadside**
    a. Soft soil – the trenching operation will be as follows:
        i. Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side opposite to shoulder of road.
        ii. 1st Trench: Trencher runs down surface, full depth, spoil windrowed on side opposite to shoulder of road.
        iii. Trench completed as in 1a.iii. - v. (Above).
        iv. 2nd Trench: Surface evaluated as sufficiently level of bladed off 3-6 inches as above. Spoil from dozer in windrow on side of previous trench.
        v. Trencher runs down surface, full depth, spoil windrowed on side of 1st Trench.
        vi. Trench completed as in 1a.iii. - v. (Above).
        vii. 3rd Trench (and continuing): Surface evaluated as sufficiently level of bladed off 3-6 inches as above. Spoil from dozer in windrow on side of previous trench.
        viii. Trencher runs down surface, full depth, spoil windrowed on side of previous trench.
        ix. Trench completed as in 1a.iii. - v. (Above).

x. Excess soil spread on trench array in a low crown.

b. Rocky soil – the trenching operation will be as follows:
   i. Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side opposite to shoulder of road.
   ii. Trencher runs down surface, full depth, spoil in windrow on side opposite of shoulder of road.
   iii. Trench completed as in 1b.iii. - v. (Above).
   iv. 2nd Trench: Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side of previous trench.
   v. Trencher runs down surface, full depth, spoil on side of 1st Trench.
   vi. Trench completed as in 1b.iii. - v. (Above). Note: excess spoil disposal deferred until array complete.
   vii. 3rd Trench (and continuing): Surface evaluated as sufficiently level or bladed off 3-6 inches to provide secure, level surface for trencher to run on. Spoil from dozer is windrowed on side of previous trench.
   viii. Trencher runs down surface, full depth, spoil on top of previous trench.
   ix. Trench completed as in 1b.iii. - v. (Above).
   x. Excess spoil spread on trench array in a low crown.

c. Very rocky/solid rock - the trenching operation will be as follows:
   i. 1st Trench: Surface drilled for blasting process
   ii. Trench line blasted
   iii. Trench cleared with track hoe; spoil placed on side opposite shoulder of road.
   iv. Trench array completed as in 2.b.iii - .ix (Above).
   v. After trench array covered, excess large rock spoil hauled to disposal.

3. **Single Trench in field**
   a. Soft soil - the trenching operation will be as follows:
      i. Trenching operation will be as in 1a (Above) with the exception that since there is no adjacent road, access and spoil pile handling will be closely monitored to minimize disturbance.
   b. Rocky soil - the trenching operation will be as follows:
      i. Trenching operation will be as in 1b (Above) with the exception that since there is no adjacent road, surface preparation, access and spoil pile handling will be closely monitored to minimize disturbance.
   c. Very rocky/solid rock - the trenching operation will be as follows:
      i. Trenching operation will be as in 1c (Above) with the exception that since there is no adjacent road, surface preparation, access and spoil pile handling will be closely monitored to minimize disturbance.

4. **Multiple Trenches in Field**
   a. Soft soil - the trenching operation will be as follows:
      i. Trenching operation will be as in 2a (Above) with the exception that since there is no adjacent road, access and spoil pile handling will be closely monitored to minimize disturbance.

b. Rocky soil - the trenching operation will be as follows:
    i. Trenching operation will be as in 2b (Above) with the exception that since there is no adjacent road, surface preparation, access and spoil pile handling will be closely monitored to minimize disturbance.
c. Very rocky/solid rock - the trenching operation will be as follows:
    i. Trenching operation will be as in 2c (Above) with the exception that since there is no adjacent road, surface preparation, access and spoil pile handling will be closely monitored to minimize disturbance.

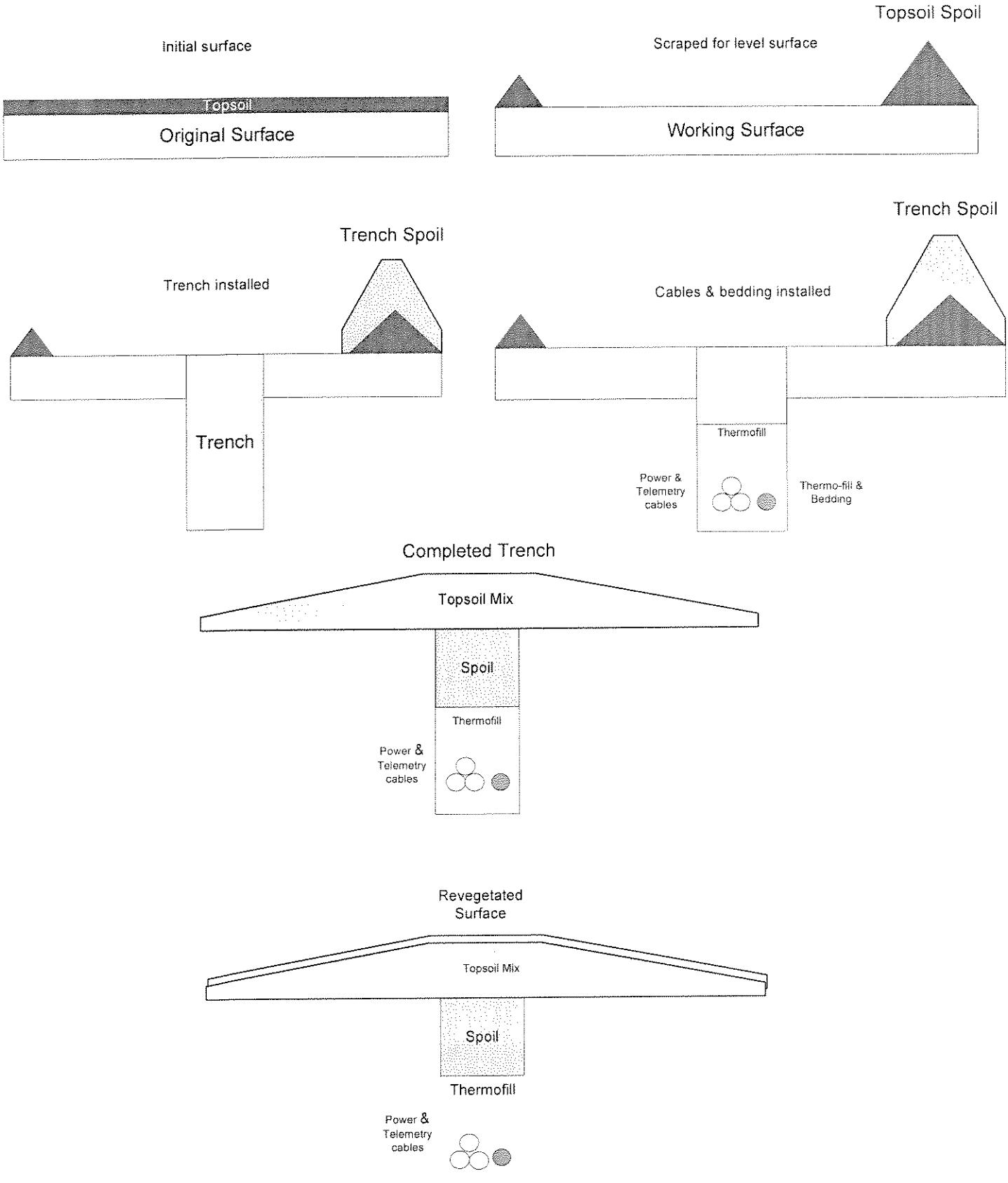
At the conclusion of the various trench installation alternatives, the surface should be as follows:

1. Soft soil: The surface should be relatively smooth and slightly crowned. The surface should be ready for direct application of revegetation.
2. Rocky Soil: The surface should be relatively smooth and crowned with surface rocks similar to the undisturbed terrain. It should be ready for direct application of revegetation in most places. If rocky surface deemed to have too little topsoil, the application of stockpiled topsoil will be instituted.
3. Very rocky/solid rock: The surface should be relatively even with no apparent residual rock piles. It should be ready for application of layer of topsoil to facilitate revegetation in a pattern which replicates natural surface appearance.

To further illustrate and document this process, please refer to the attached sketches and photo array.

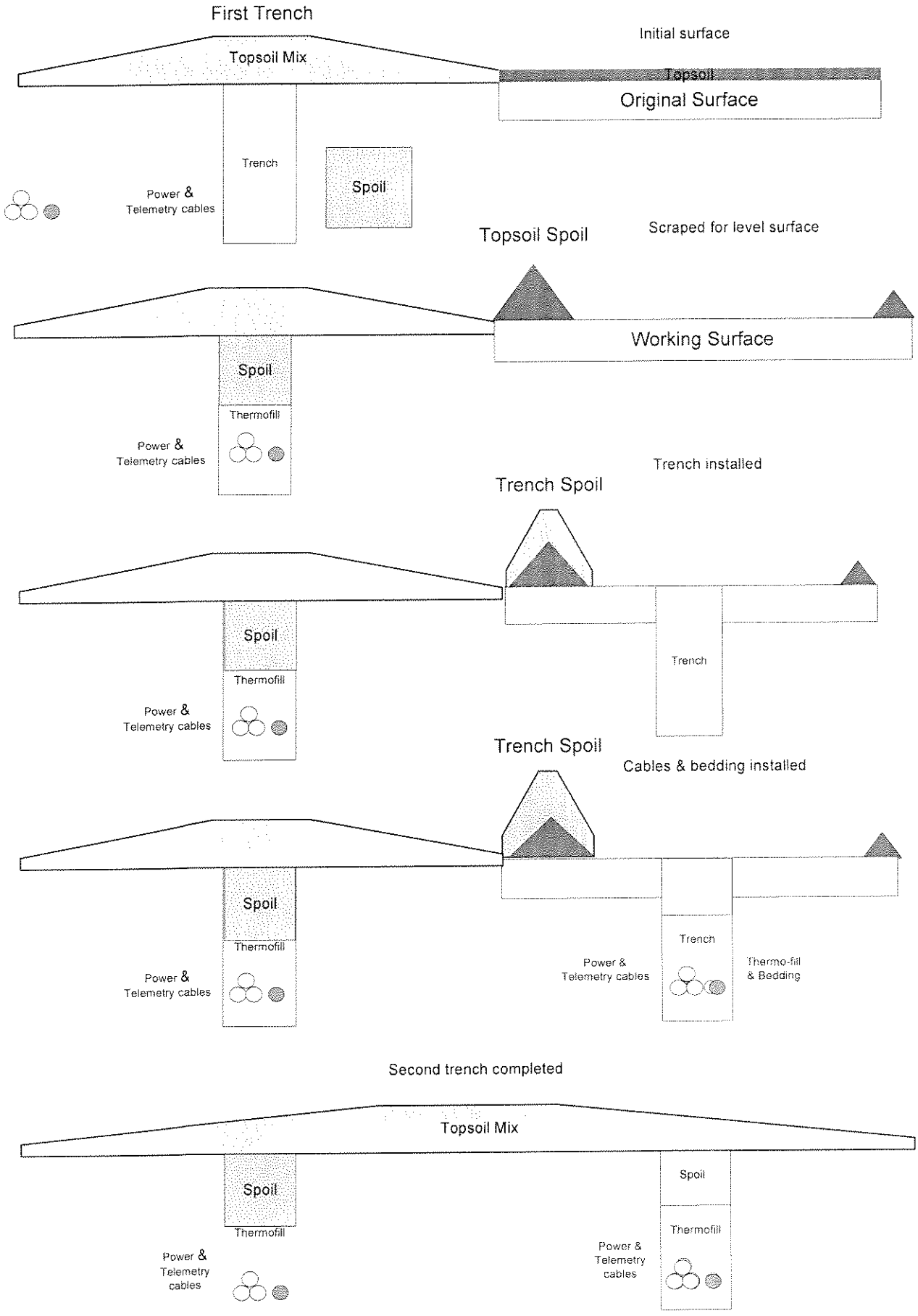
This effort has endeavored to provide information defining the process which accomplishes the goal of a natural appearance completed within the existing contractor's specifications, equipment and expertise. As in standard, accepted construction practice any abnormal or otherwise unexpected conditions encountered will be dealt with utilizing these procedures as a guideline to achieve the desired outcome.

Basic Trench Installation Sequence



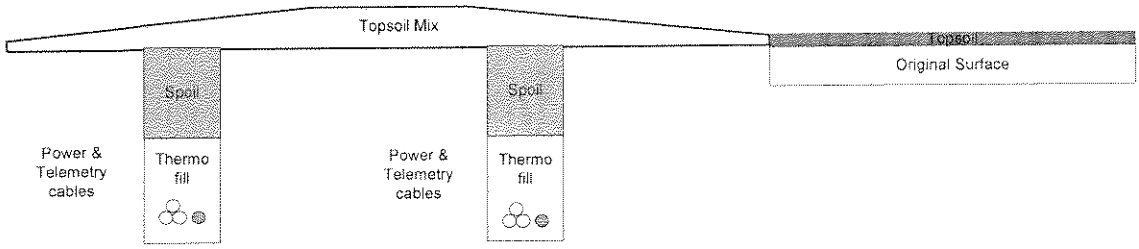
Final configuration

Multiple Trench Installation Sequence

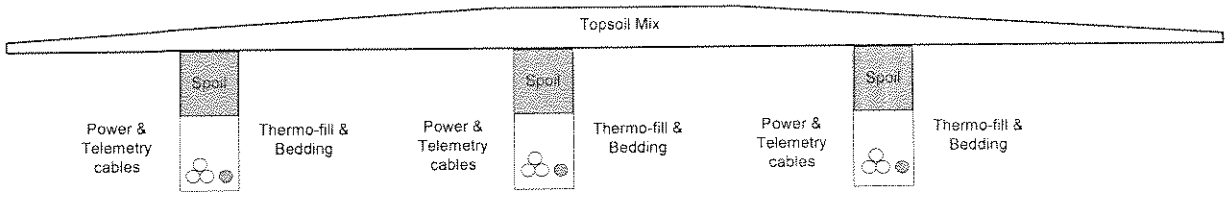


Multiple trench installation Sequence Cont'd.

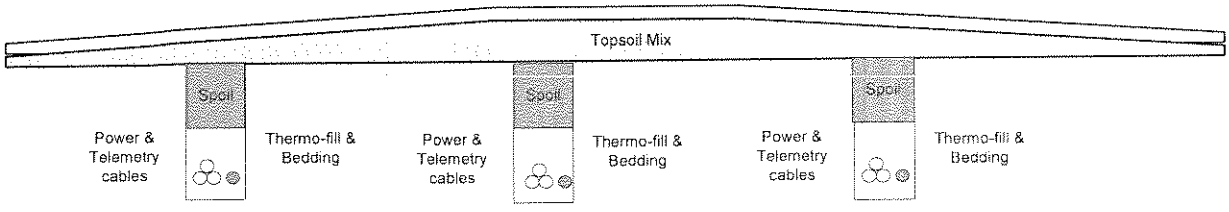
Preparation for Third (and continuing) Trench



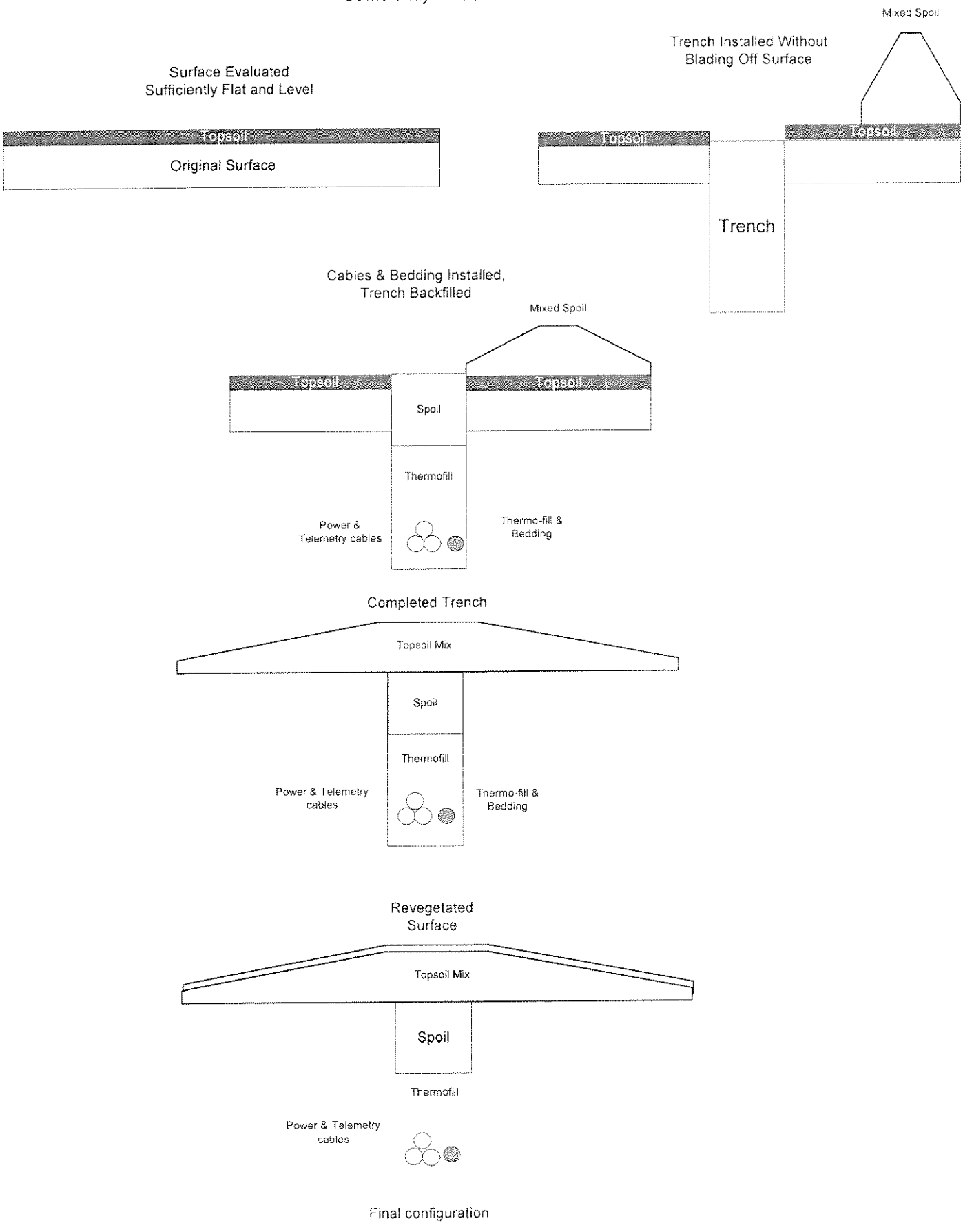
Third Trench Completed



Vegetation Completed



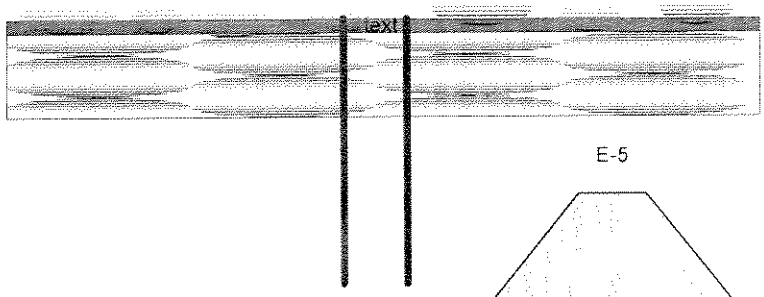
Trench installation Process where Surface is Evaluated to be Sufficiently Flat & Level



Trench Installation Process with Rocky Soil Requiring Blasting

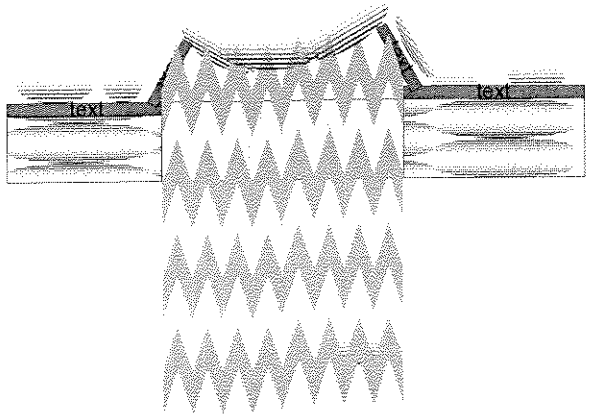
Original Surface

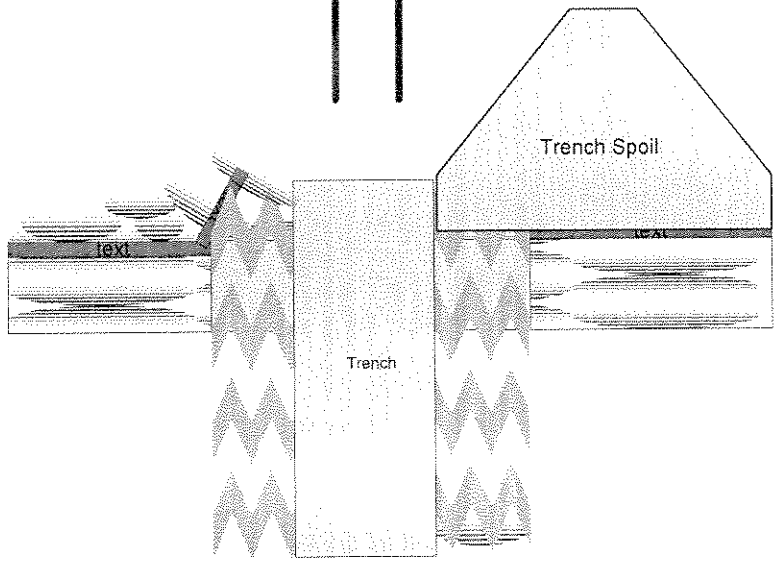
Drilled For Blasting



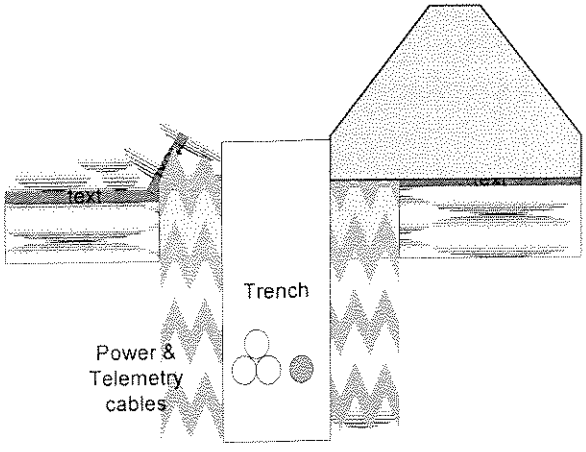
E-5

Blast Fractured Rock





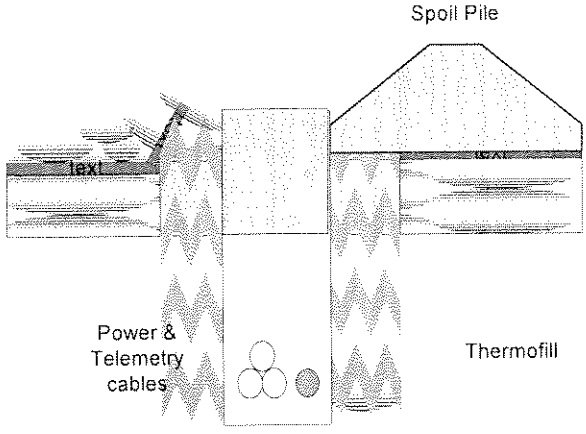
Spoil Pile



Cables Installed

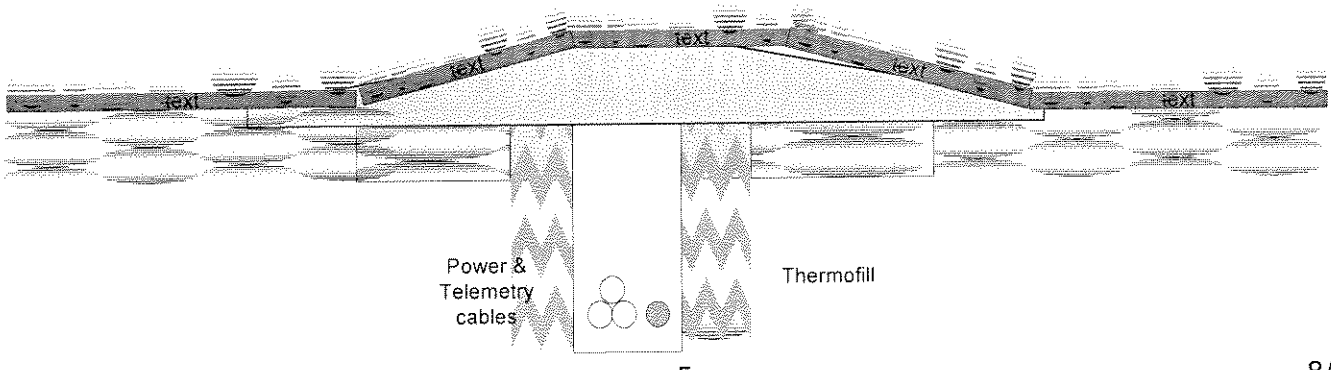
Trench Excavated

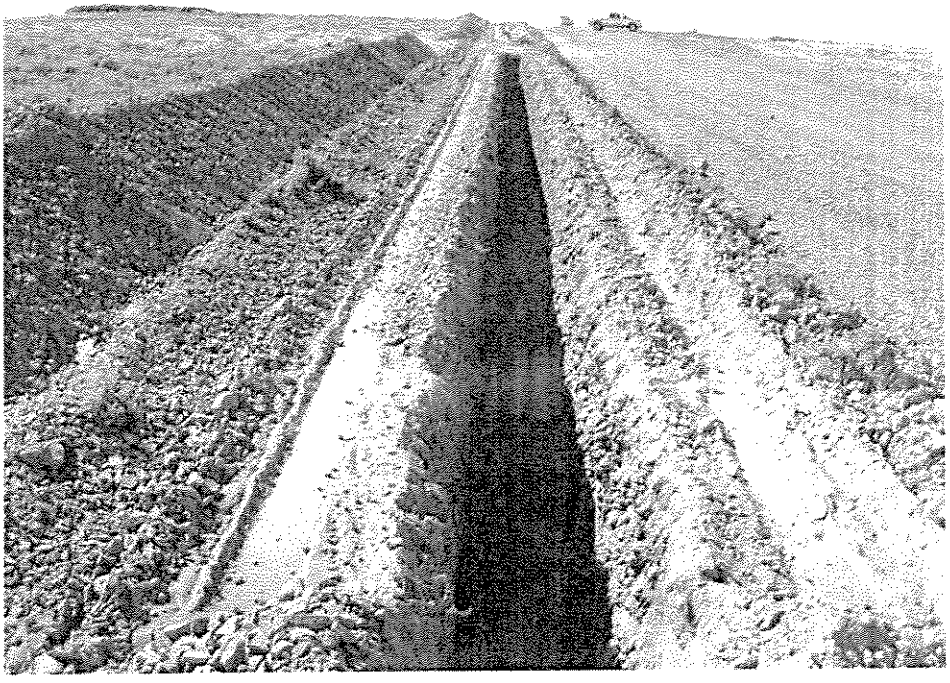
Spoil Pile



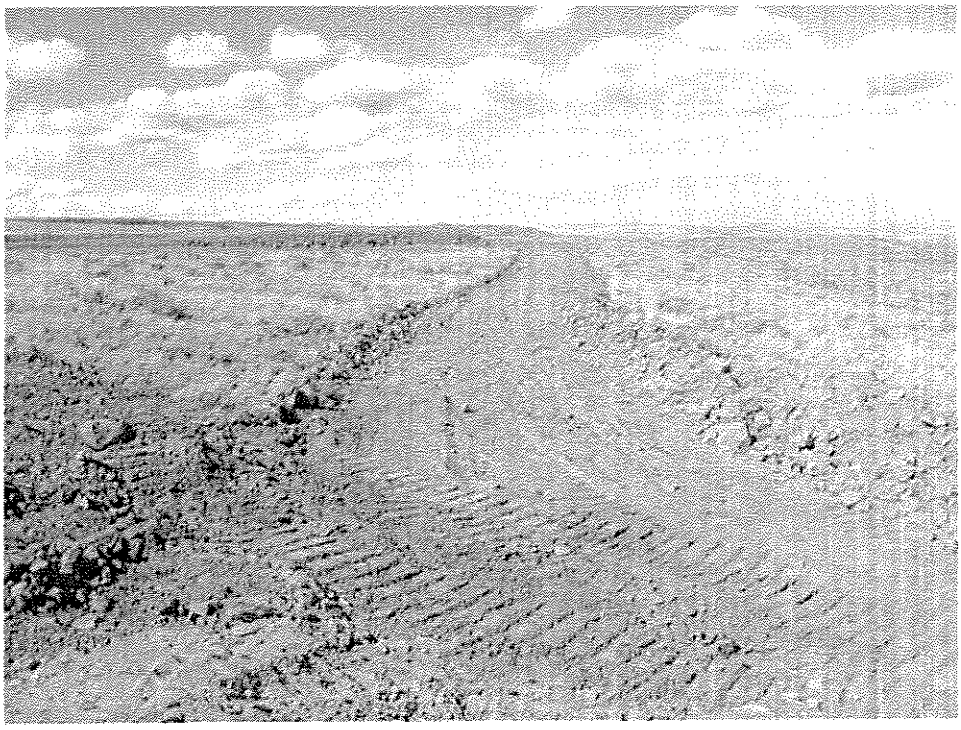
Trench Backfilled

Completed Trench

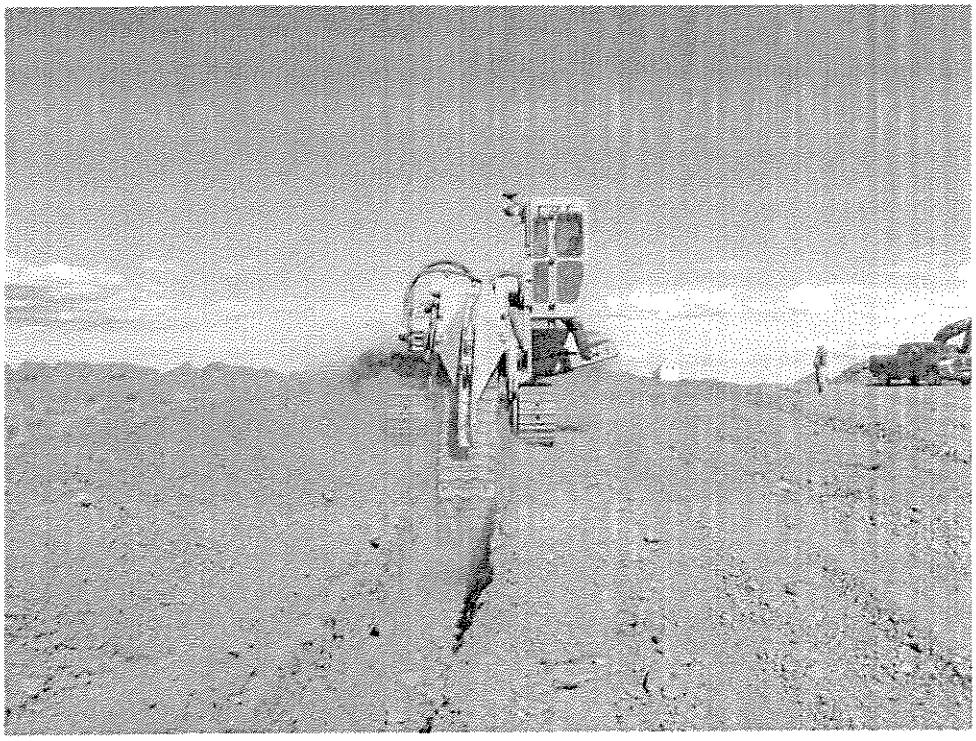




Trench on side of road with trench spoil on top of topsoil

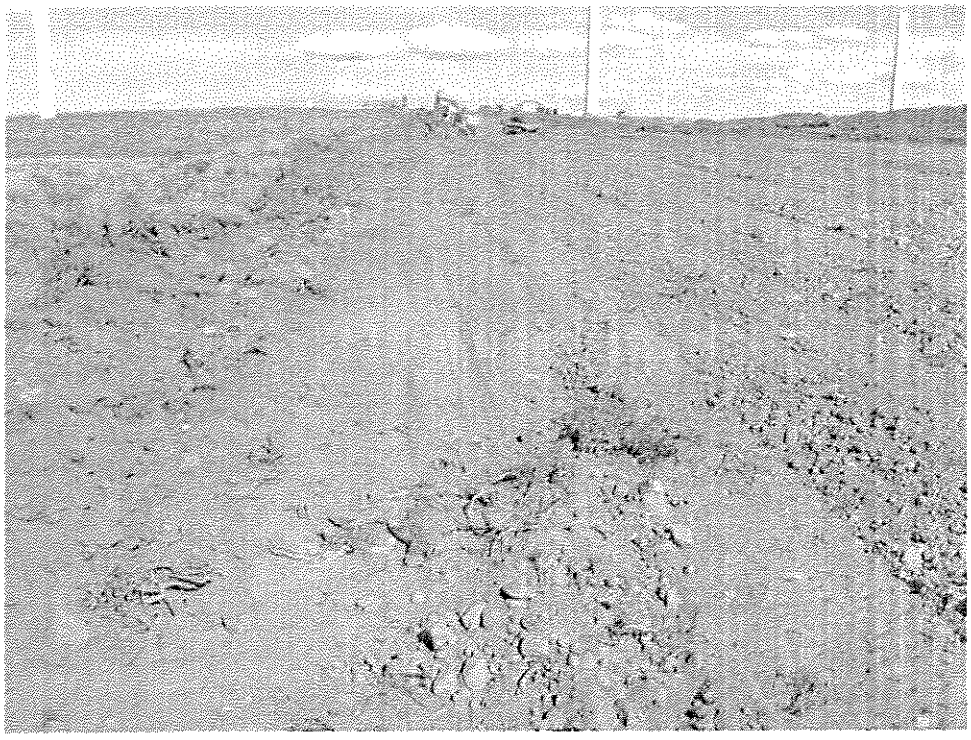


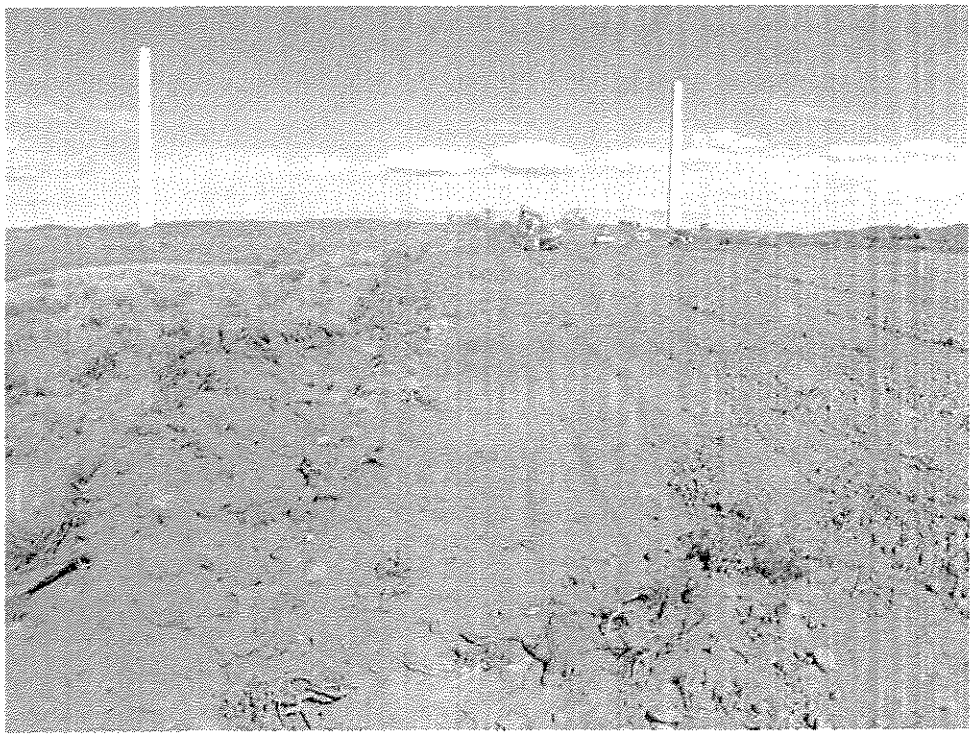
Trench in field showing clearance spoil preferentially on RH side of area



Multiple trench array with trencher piling spoil on top of topsoil windrow from clearing pass

Cable installed on top of bedding in same trench as above

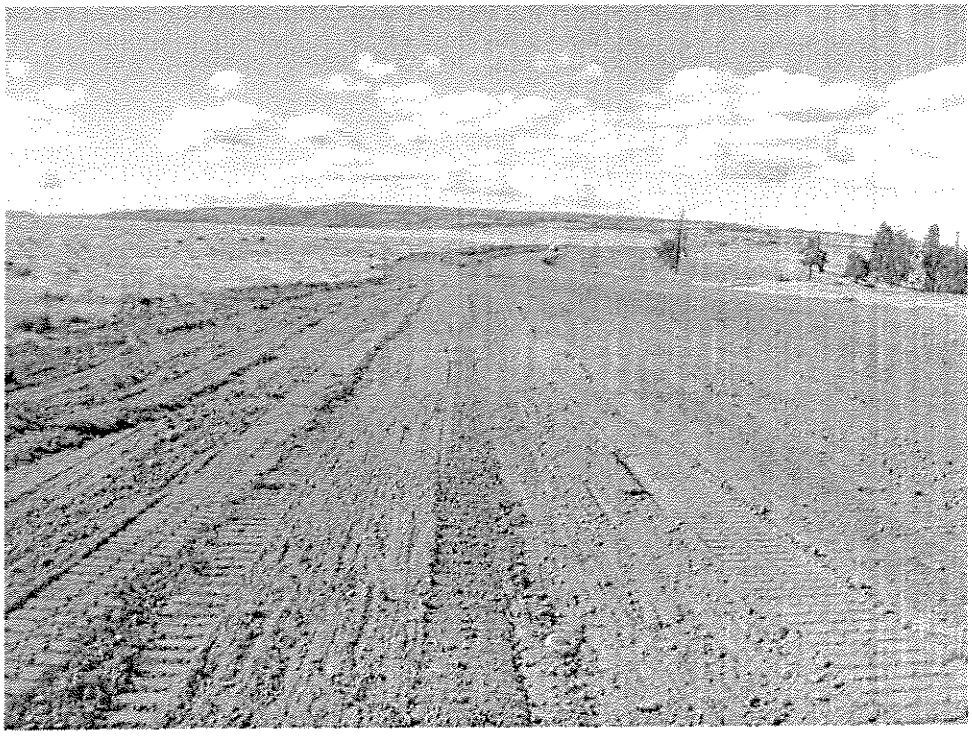




Trench closed with organics on top of same trench as above

Dozer with angled blade to preferentially move spoil to LH side

Multiple trench array with organics on top of closure (E side of Jeep Rd)



Multiple trench array with organics on top of closure (W side of Jeep Rd)